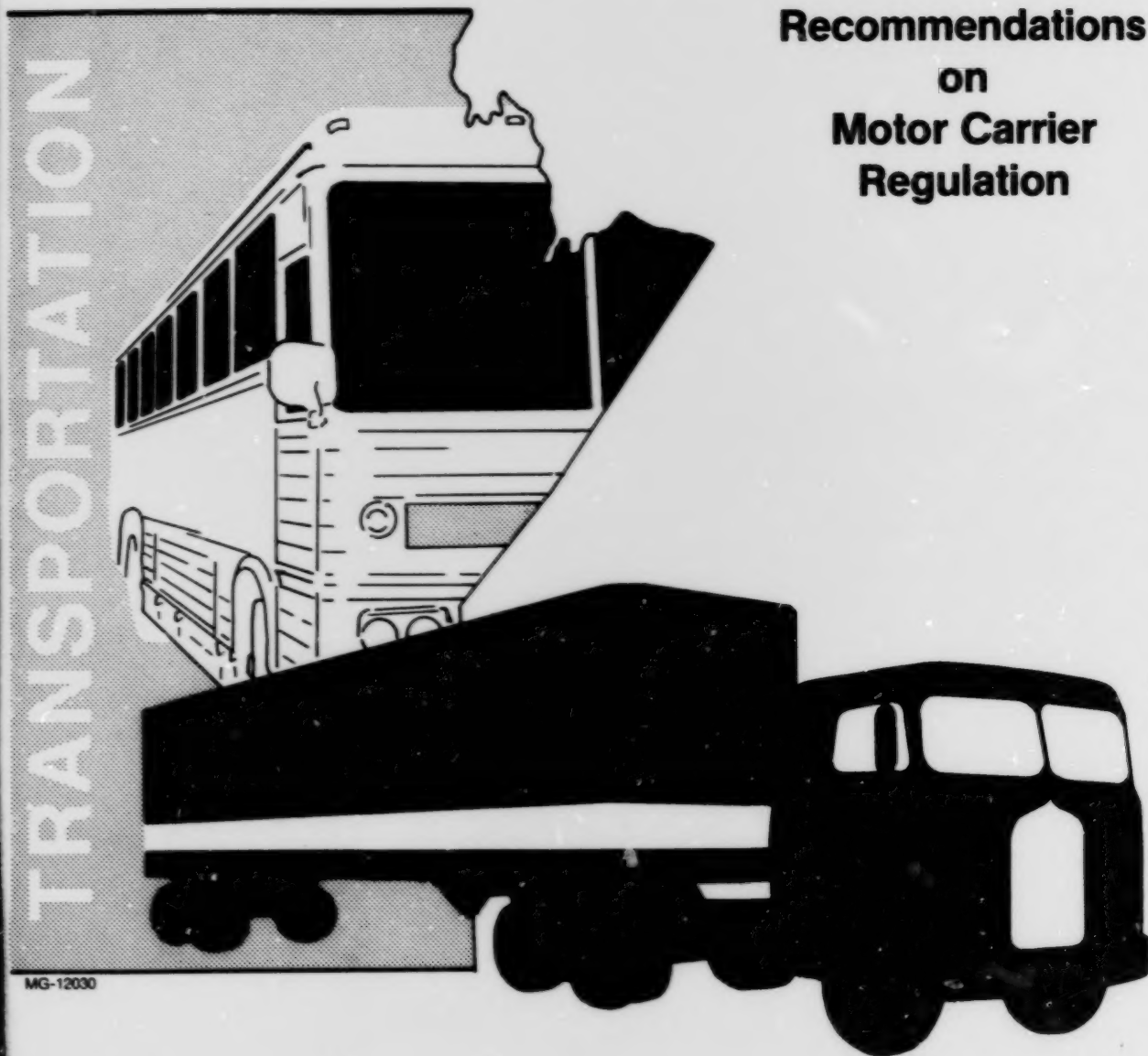


manitoba motor carrier industry

Recommendations on Motor Carrier Regulation



MG-12030

The Task Force Review of Motor Carrier Regulations in MANITOBA.

**RECOMMENDATIONS ON
MOTOR CARRIER REGULATION**

SUBMITTED BY

**TASK FORCE REVIEW OF
MOTOR CARRIER REGULATION**

**Manitoba
Highways and
Transportation**



SEPTEMBER 6, 1984



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SECTION I

INTRODUCTION

Establishment of Task Force

A task force to review the regulations affecting motor transport was established by the Minister of Highways and Transportation in December 1982. The need for a review had been evident for some time. The legislation regulating transportation by trucks was enacted in 1930 and has changed very little since then; in the meantime, the trucking industry has changed very much indeed. Regulation of railways, the major competitors of the trucking industry, was substantially reduced in 1967 when Parliament passed the National Transportation Act. In the late 1970's the federal and provincial governments resolved to launch an effort to significantly reduce regulations in all sectors of the economy in order to enhance the flexibility of the private sector to respond to business opportunities.

The Economic Council of Canada concluded after extensive research that performance in a number of sectors, including transportation, could be expected to improve if regulations were reduced. The Province of Ontario launched a thorough review of its trucking regulations and is on the verge of introducing significant changes in the regulatory system. In the United States regulatory controls over air, rail and motor transport industries were substantially reduced in 1980. Thus the review of motor transport regulations in Manitoba coincides with changes in the regulatory environment in the jurisdictions with which the Manitoba carriers interact.

The Task Force has published three reports; the first report entitled "System Characteristics" describes the motor transport industry in Manitoba and provides statistics on the industry. The second report is a compendium of papers on the history of motor transport regulation in the province, a description of the present regulatory system, an

overview of what is happening in other provinces, two papers on the economic aspects of regulation and one paper on the regulation of vehicle weights and dimensions. The third report dealt with problems and issues of regulatory controls and outlined possible options for change. Following publication of these reports the Task Force held a series of public meetings in the province at which some 65 presentations were made by interested individuals, groups and organizations. Additional presentations to the Task Force have been made by mail. The Task Force has benefited greatly from these presentations, and is confident that their beneficial impact is reflected in the analysis and the recommendations of this report.

Organization of the Report

The content and organization of this report is designed to enable the reader to understand the issues and recommendations without having to refer to the background papers. Besides the obvious advantage of saving the reader time and effort, this approach recommended itself to the Task Force for other reasons. One reason is that the problems and issues in the industry can now be restated with the benefit of the information obtained from the representations made at the public meetings. Another reason is that the problems must be reformulated to address specifically the relevant sections of the Highway Traffic Act (HTA), the regulations, and the policies of the Motor Transport Board (MTB) which need to be amended if the recommendations of the Task Force are implemented. At the same time, there is little need to repeat all that has been written in the earlier reports; the description of the industry and the regulatory problems in this report are restricted to those elements which are essential to the understanding of the issues.

Section II provides a brief description of the motor transport industry in Manitoba and some background on the regulatory system, how it evolved.

Section III outlines the principal elements of regulatory controls and some aspects of the regulation of interprovincial trucking.

Section IV lists problems and issues in the regulation of motor transport which were identified in the problems and issues paper published in 1983.

Section V contains a summary of positions taken on various issues by persons and organizations making presentations to the Task Force.

In Section VI the Task Force presents its general conclusion on motor transport regulation and its recommendations for specific changes in legislation and MTB policy to make regulation workable.

SECTION II

THE REGULATED TRUCKING INDUSTRY

The Highway Traffic Act of Manitoba defines a truck as "... a motor vehicle ... that is constructed or adapted to carry goods, wares, and merchandise, freight or commodities, but not passengers or luggage." In 1982, there were 156,817 trucks registered in Manitoba. To a greater or lesser extent the use of those trucks is regulated by the HTA. Owners must register their trucks according to their use in one of four categories. The four categories are "public service vehicles" (PSV), "commercial trucks" (CT), "farm trucks" (F) and "other" or just "trucks" (T). The registration plate identifies the category in which a truck has been registered.

Table 1 shows the number of trucks in each licence category by gross weight. The largest category is the "other" or T-plated trucks of which 78,769 were registered in 1982. Next largest category is F-plated trucks with 62,488; then commercial trucks (CT) with 13,436 and the smallest category is PSV with 2,124 registered.

The permitted use of trucks depends upon their registration. Basically, the HTA defines what a PSV is, then says that a commercial truck is any truck that is not a PSV, except if it is a farm truck and except if it is a truck used for a number of other purposes. Thus, the permitted use of most trucks in Manitoba is derived from the definition of the public service vehicle.

TABLE 1

Summary of Gross Vehicle Weights of Manitoba Trucks By Classification, 1982¹

Gross Vehicle Weight Range (Kilograms)	For-Hire	Commercial	Farm	Other	Total
Under 4,001	128	8,702	38,571	69,133	116,534
4,001 - 6,000	22	1,304	4,603	2,267	6,196
6,001 - 8,000	16	462	3,260	736	4,474
8,001 - 10,000	46	451	3,867	1,057	5,421
10,001 - 12,000	69	474	4,166	1,478	6,187
12,001 - 14,000	62	488	3,990	786	5,326
14,001 - 16,000	20	139	505	180	844
16,001 - 18,000	7	35	223	125	390
18,001 - 20,000	58	172	1,218	483	1,931
20,001 - 24,000	83	285	1,645	900	2,913
24,001 - 28,000	45	117	67	271	500
28,001 - 32,000	43	39	25	105	212
32,001 - 36,000	49	64	24	184	321
36,001 - 40,000	934	644	290	955	2,823
40,001 - 48,000	102	12	5	16	135
Over 48,000	440	48	29	93	610
Total	2,124	13,436	62,488	78,769	156,817

1. Source: Manitoba vehicle registration file, December 1982

A. Public Service Vehicles

The HTA defines a public service vehicle as "... a motor vehicle or trailer operated ... for the transportation for gain or compensation of persons or property upon the highway, and includes a semi-trailer truck; but does not include the passenger-carrying motor vehicles of an electric or steam railway or motor bus company operating on the streets of a city, or school buses, ambulances, or hearses or motor vehicles operated for gain or compensation under the Taxicab Act or a municipal by-law in cities, towns or villages".

The two distinguishing characteristics in the definition of a PSV are that it is operated for gain or compensation and that it is operated outside urban centres (cities, towns or villages) or, more accurately, between urban centres.

A third, and by far the most important characteristic of a PSV flows from sections 258 and 263 of the HTA which provide that a certificate from the Motor Transport Board is required to operate a PSV, and that the MTB may issue a certificate if the board decides it is in the public interest. With some exceptions, the onus is on the applicant to show that it is in the public interest that he be granted a PSV certificate. Hence, not everyone who would want to register his truck as a PSV to carry freight between urban centres in Manitoba will be allowed to do so. The MTB exercises entry controls in for-hire transportation. Furthermore, the board specifies which area a company may serve, the type of freight it may carry, and in some cases, the type of equipment it may use.

Table 1 shows that 2124 trucks were registered as PSV in December 1982. This is only 1.5% of all trucks registered in Manitoba.

However, it should be observed that many of the trucks operated by Manitoba based trucking companies are not registered in Manitoba. Since the coming into being of the Canadian Agreement on Vehicle Registration (CAVR), trucking companies which operate interprovincially may register trucks in the province of their choosing. The registration fees are shared among the provinces on a pro-rated basis, i.e. on the basis of the mileage travelled in each of the provinces. It would appear that many Manitoba based carriers have used this flexibility to register their trucks used in interprovincial transport in other provinces. For example, Statistics Canada data on motor carriers with revenues over \$100,000 show that Manitoba based carriers operated 10,014 units in 1980. It appears reasonable to conclude that most of the 2124 PSV trucks registered in Manitoba were operated primarily if not exclusively within Manitoba.

Most of the PSV trucks registered in Manitoba were semi-trailers or truck-trailer combinations, as is indicated by the data on GW ranges in Table 1. Weight restrictions on provincial trunk highways limit the GW of trucks with a single rear axle to 13,690 kg., and of trucks with a tandem rear axle to 20,590 kg. The data in Table 1, show 343 trucks with GW below 14,000 kg., 85 trucks with GW between 14,000 kg and 20,000 kg, and 1696 trucks with GW over 20,000 kg. It may further be noted that a person or company registering it at a lower GW than is specified by the manufacturer, as long as the GW for which the truck is registered is not exceeded in its actual use. For example, the owner of a truck used exclusively to transport commodities of considerable volume but light in weight (such as potato chips or popcorn) may register the vehicle at a GW that is considerably below the capacity specified by the truck or trailer manufacturer. Hence the data on GW in Table 1 may understate to some extent the number of semi-trailers or truck-trailer combinations actually in use.

B. Categorisation of For-Hire Carriers by Area and Base of Operation

All for-hire carriers with operating authority in Manitoba are categorized by area of operation and base in Table 2A and Table 2B. As of May 29, 1981 a total of 559 for-hire carriers had Manitoba operating authorities. Of these, 331 were based in Manitoba, 168 based in other Canadian provinces and 60 based in the United States.

All but one of the 180 carriers authorized to operate strictly within Manitoba were Manitoba based. The remaining carrier with only intra-Manitoba authority was based in Alberta. Seven of the 135 carriers with only interprovincial authority were based in Manitoba, the rest were based in other Canadian provinces. Manitoba based carriers represented 25 of the 82 carriers with only international authority, with 56 United States based carriers and one carrier based in Alberta. A total of 50 carriers had the authority to transport Manitoba goods intraprovincially, interprovincially and internationally, with 42 of these being Manitoba based. The schematic diagram following Table 2 illustrates the market segmentation.

Table 2B summarizes the number of carriers serving each market. Due to the fact that some carriers fall into more than one category the totals will be greater than the actual number of carriers. A total of 307 carriers serve the intra-Manitoba market with 285 of them being Manitoba based. Slightly fewer carriers operated interprovincially, 279, with 109 based in Manitoba, 166 based in other Canadian provinces, and 4 based in the United States. The international movement of goods is conducted by 185 carriers of which 99 are Manitoba based, 26 based in other provinces and 60 based in the United States.

TABLE 2A

Number of For-Hire Carriers Authorized to Operate in Manitoba by Type¹

Area of Operation	Manitoba Based	Based in Other Canadian Provinces	United States Based	Total, all Bases
Intra-Manitoba only	179	12	0	180 ²
Interprovincial only	7	128 ²	0	135 ²
International only	25	1	56	82
Intra and inter-provincial	46	13	0	59
Interprovincial and International	14	17	4	35
Intraprovincial and International	18	0	0	18
Intra and Inter-provincial and International	42	8	0	50
Total, All Areas	331	168	60	559

1. Source: Manitoba Trucking Association, Manitoba Official Ship by Truck Directory, 1981-82.
2. Initially, four carriers serving intra-Manitoba were found which were based in other Canadian provinces. Upon further checking, three were found to be interprovincial carriers. The table reflects this change.

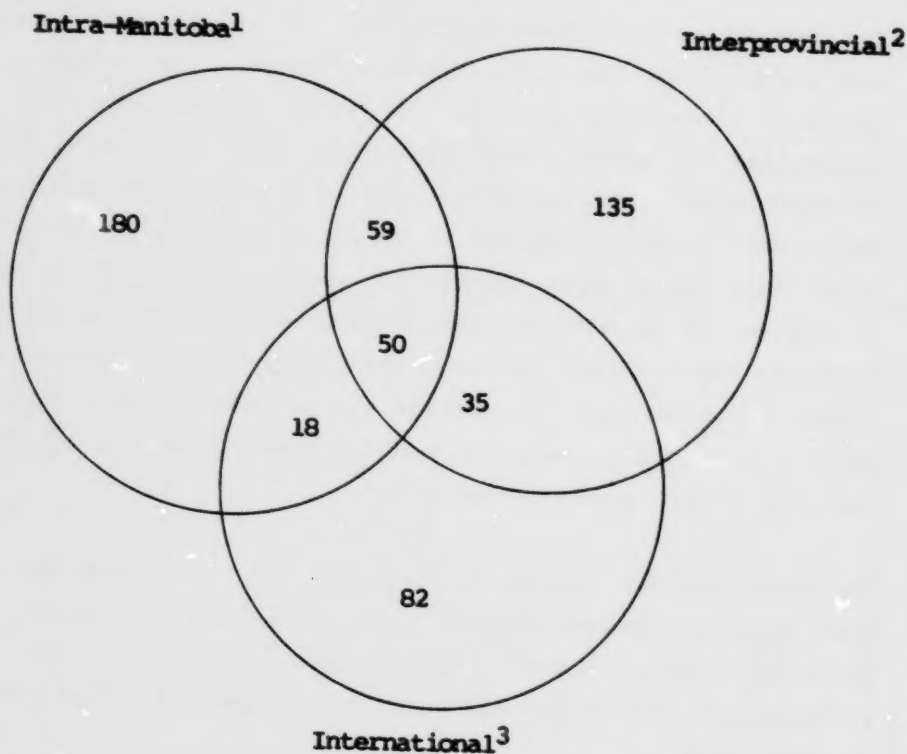
TABLE 2B

Summary of For-Hire Carriers Operating in Manitoba by Type¹

Area of Operation ³	Manitoba Based	Based in Other Canadian Provinces	United States Based	Total, all Bases
Intra-Manitoba	285	22 ²	0	307 ²
Interprovincial	109	166 ²	4	279 ²
International	99	26	60	185

1. Source: Manitoba Trucking Association, Manitoba Official Ship by Truck Directory, 1981-82
2. Initially, four carriers serving intra-Manitoba were found which were based in other Canadian provinces. Upon further checking, three were found to be interprovincial carriers. The table reflects this change.
3. Carriers operating in more than one area are counted once for each area they serve. The total of all areas does not equal the number of carriers.

C. Schematic of Manitoba For-Hire Operating Authorities



-
1. Intra-Manitoba: carriers which are authorized to transport goods with a Manitoba origin and Manitoba destination.
 2. Interprovincial: carriers which are authorized to transport goods between Manitoba and other Canadian provinces.
 3. International: carriers which are authorized to transport goods between Manitoba and the United States.

D. Commodity Specification in Operating Authorities

The commodities which for-hire carriers are authorized to transport are specified by the Motor Transport Board. By reviewing the operating authorities granted, the number of carriers which are authorized to handle each commodity type for each of the intraprovincial, interprovincial and international markets can be determined. This information is displayed in Table 3. It must be noted here that some degree of interpretation of commodity categories was required to produce these tables from the operating authority descriptions. As well, where more than one commodity was listed for a carrier, the carrier was included in each commodity group. As a result, the total over all commodities will be greater than the actual number of carriers.

For intra-Manitoba carrier authorities, the commodities mentioned most often are general freight (129), livestock and poultry (83), buildings, mobile homes, trailers and boats (47), and dairy products and eggs (42). All other commodities are listed less than 25 times each.

For interprovincial authorities, there is a more even distribution of commodities. Livestock and poultry are mentioned most often (56), followed in order by general freight (42), unprocessed grains, seed and oilseeds (33), household goods (32), and fertilizer (27). All other products are listed less than 25 times each. In 20 instances only corridor traffic is authorized, i.e., no pick-up or drop-off in Manitoba is allowed.

Designated commodities are most frequently listed on the operating authorities for international movements (88 times). Authority to transport these goods, which include unprocessed farm products, livestock, honey and peat moss is readily granted according to Revised Regulation H60-R16. All other commodities are listed less than 25 times.

TABLE 3

Commodities Authorised for Carriage by For-Hire Carriers, 1981

Commodity Group	Commodity	Intra-Manitoba	Inter-Provincial	Inter-National	Total, all Markets
Live Animals	livestock and poultry	83	56	6	145
	horses	2	7	2	11
Food, Feed, Beverages and Tobacco	meat and fish	7	11	13	31
	dairy products & eggs	42	12	8	62
	raw grains, seed & oil seeds	18	33	17	68
	feeds & ingredients	13	22	17	52
	fruit, vegetables & honey	6	12	8	26
	prepared foods	8	17	9	34
Crude Materials, Inedible	designated commodities ²	0	0	88	88
	crude wood (timber, pulp, logs, poles, etc.)	3	5	6	14
	ores and concentrates (includes gypsum & limestone)	7	9	5	21
	stone and gravel	3	7	6	16
	salt	3	4	2	9
	scrap metal	3	3	3	9
	plants and flowers	1	3	3	7
Fabricated Materials, Inedible	cement and cement products	6	11	3	20
	lumber, wood products & building materials	9	21	17	47
	raw paper	3	2	3	8
	explosives and related products	4	5	0	9
	vegetable and animal oils	0	4	1	5
	chemicals, acids and related products	6	14	13	33

TABLE 3 Cont'd
Commodities Authorized for Carriage by For-Hire Carriers, 1981¹

Commodity Group	Commodity	Intra-Manitoba	Inter-Provincial	Inter-National	Total, all Markets
Fabricated Materials,	fertilizer	12	27	13	52
	petroleum products	21	23	6	50
	steel, steel products, metal products	11	23	8	42
	brick, tile & glass	0	4	3	7
End Products, Inedible	buildings, mobile homes, trailers & boats	47	24	13	84
	household goods (used)	20	32	12	64
	construction equipment	15	7	3	25
	agricultural equipment	10	10	12	32
	other heavy equipment and machinery	19	11	3	33
	motor vehicles and snowmobiles	2	13	13	28
	tires and tubes	0	2	2	4
	miscellaneous equipment and materials	7	22	9	38
	furniture and appliances (new)	5	4	1	10
	paper products (including newspaper)	12	2	3	17
	plastic products	0	2	4	6
Miscellaneous Goods	general freight	129	42	15	186
	miscellaneous goods not specified elsewhere	17	9	7	33
Corridor Traffic	goods authorized to travel through Manitoba with no pickup or drop off	0	20	7	27

1. Source: Manitoba Trucking Association, The Manitoba Official Ship by Truck Directory, 1981-82.
2. Designated commodities include raw farm products, livestock, honey and peat moss. For a complete description, see Revised Regulation H60-R16.

When the three markets are totalled, general freight appears most often (186), followed in order by livestock and poultry (145), designated commodities (88), buildings, mobile homes, trailers and boats (84), raw grains, seed and oilseeds (68), used household goods (64), dairy products and eggs (62), fertilizer (52), feeds and ingredients (52), and petroleum products (50). All other commodities were listed less than 50 times. Here, designated commodities are treated separately as a special category, although there is some overlap between designated products and other commodities.

E. Other Restrictions on Operating Authorities

The operating authorities granted by the Motor Transport Board may contain restrictions relating to particular companies to be served, certain load restrictions, or the type of equipment to be used. The number of carriers with restrictions of different types is summarized in Table 4.

One type of restriction on carriers is that they can carry goods for specified firms only. These are commonly referred to as contract carriers. This restriction is the type most often encountered, with 93 intra-Manitoba, 108 interprovincial and 53 international operating authorities listing a specific firm for which goods may be transported.

TABLE 4

Restrictions Applied on For-Hire Operating Authorities, 1981¹

Type of Restriction	Intra-Manitoba	Inter-Provincial	Inter-National	Total, all Markets
Goods of Specified Firms	93	108	53	254
Single trip load ² or surplus loads	105	16	1	122
Specified weight or size (including truckload only)	27	42	9	78
Tank-type vehicles to be used	9	16	6	31
Lowbed equipment to be used	10	13	2	25
Hopper bottom equipment to be used	7	17	1	25
Regular trailers to be used	1	6	2	9
Other specified equipment to be used ³	12	25	6	43
Tank-type vehicles <u>not</u> to be used	5	16	5	26
Other specified equipment <u>not</u> to be used	6	5	0	11
Total, All Restrictions	275	264	85	624

1. Source: Manitoba Trucking Association, Manitoba Official Ship by Truck Directory, 1981-82. A carrier cannot be counted more than once in each cell, but it may be counted once for each restriction type that applies for each market in which the restriction applies.
2. For a definition of single trip load authority, refer to Schedule D, Rule 11 of the Rules of Carriage.
3. Includes requirements for special loading and unloading equipment due to the nature of the goods carried.

Another type of restriction is the single trip load. This restriction specifies that point to point service can be provided on occasion from one consignor to one consignee where regular service is not provided, with a trip permit, or when certain commodities are carried³. Also, carriers may be allowed to haul surplus loads for other P.S.V. carriers. Together, these restrictions appear 122 times, with 105 of them applying to intra-Manitoba operating authorities.

A carrier's operating authority may specify the allowed size of vehicle or weight of load to be carried. For example, a carrier may be restricted to using vehicles with gross vehicle weight below a certain limit or limited to having loads below a certain weight. As well, an authority may specify truckload hauls only. These types of restrictions are experienced 78 times, with 42 being on interprovincial authorities and 27 on intraprovincial authorities.

The final type of restriction listed is that restricting the type of equipment which can be used for transporting freight under a given operating authority. The restriction to using tank-type vehicles appears 31 times, while another 26 times the restriction of not using tank-type vehicles applies. Lowbed and hopper bottom equipment are each specified for use 25 times, with regular trailers mentioned nine times. Other types of equipment are specified for use 43 times and specified not to be used 11 times. These other types include those equipped with special loading and unloading devices, temperature controlled trailers and other special equipment types.

3. Rule 11, Schedule D. Rules of Carriage, Board Order 5/80

A total of 624 restrictions to operating authorities were recorded, of which 275 were related to intra-Manitoba authorities, 264 to interprovincial authorities and only 85 to international authorities.

F. Carriers Serving Rural Communities

The intraprovincial market can be examined in more detail by identifying the number of for-hire carriers serving selected Manitoba communities to/from the distribution centers of Winnipeg and Brandon. The pattern of truck service within Manitoba can be characterized as a hub-and-spoke network centered on Winnipeg and to a lesser extent Brandon. Service information is drawn from the Manitoba Official Ship by Truck Directory, which contains one section listing Manitoba points served by P.S.V. operators from Winnipeg and another section for Manitoba points served by P.S.V. operators from Brandon. For Winnipeg, separate counts are made for general freight carriers and all types of freight carriers. The total of all types of freight carriers is the total number of carriers listed as serving the particular community. In Table 5 the communities served have been ranked by decreasing population size.

TABLE 5

Number of For-Hire Freight Carriers by Community, 1981-821

Community	Population ² (1981)	Number of Freight Carriers Serving Community		
		General Freight Carriers From/to Wpg.	All Types of Freight Carriers From/to Wpg.	All Types of Freight Carriers From/to Brandon
Brandon	36,242	2	3	0
Thompson	14,288	2	2	1
Portage la Prairie	13,086	3	5	1
Selkirk	10,037	2	3	0
Dauphin	8,971	2	3	1
Flin Flon	7,894	1	1	1
Steinbach	6,676	1	2	0
The Pas	6,390	2	2	1
Winkler	5,046	3	4	1
Morden	4,579	2	3	1
Swan River	3,782	1	1	1
Neepawa	3,425	4	5	2
Virden	2,940	1	4	3
Altona	2,757	1	2	1
Minnedosa	2,637	4	5	2
Beausejour	2,462	2	3	0
Carman	2,408	1	3	1
Leaf Rapids	2,356	2	2	0
Killarney	2,342	1	2	1
Stonewall	2,210	1	2	0
Roblin	1,953	1	2	1
Snow Lake	1,853	2	2	1
Souris	1,731	1	2	2
Boissevain	1,660	1	2	1
Russell	1,660	1	2	1
Morris	1,570	1	3	1
Gimli	1,550	2	3	0
Carberry	1,510	2	3	1
Ste. Anne	1,338	1	2	0

TABLE 5 Cont'd

Number of For-Hire Freight Carriers by Community, 1981-82

Community	Population ² (1981)	Number of Freight Carriers Serving Community		
		General Freight Carriers From/to Wpg.	All Types of Freight Carriers From/to Wpg.	All Types of Freight Carriers From/to Brandon
		1	2	0
Niverville	1,329	1	2	2
Melita	1,156	2	3	1
Deloraine	1,136	1	2	1
Rivers	1,107	1	2	1
Ste Rose du Lac	1,090	1	2	1
Grandview	1,013	1	2	0
Lac du Bonnet	985	1	2	0
Arborg	974	2	3	1
Gladstone	964	1	2	0
Teulon	925	1	2	0
St. Pierre - Jolys	919	1	2	1
Birtle	887	1	2	1
Manitou	861	1	1	0
Winnipegosis	855	1	3	2
Pilot Mound	838	2	3	2
Shoal Lake	835	2	2	1
Gilbert Plains	812	2	3	1
MacGregor	795	1	2	0
Emerson	762	1	2	1
Treherne	743	1	2	1
Glenboro	741	1	2	1
Hamiota	728	2	3	3
Rosburn	696	1	2	1
Powerview	691	1	2	0
Riverton	657	1	1	1
Minitonas	628	1	2	1
Notre Dame de Lourdes	627	1	2	1
McCreary	618	1	2	1
Somerset	596	1	2	
Plum Coulee	592	1	3	
St. Claude	592	1	3	0
Winnipeg Beach	565	1	2	1
Gretna	545			

TABLE 5 Cont'd

Number of For-Hire Freight Carriers by Community, 1981-82¹

Community	Population ² (1981)	Number of Freight Carriers Serving Community		
		General Freight Carriers From/to Wpg.	All Types of Freight Carriers From/to Wpg.	All Types of Freight Carriers From/to Brandon
Erickson	540	2	3	3
Elkhorn	509	1	1	3
Wawanesa	492	1	2	1
Hartney	490	3	4	2
Crystal City	489	1	2	2
Ethelbert	474	1	1	1
Binscarth	472	1	2	1
Bowman	454	1	1	0
Benito	441	1	1	1
Rapid City	431	1	2	1
St. Lazare	414	1	1	1
Cartwright	384	1	1	1
Oak Lake	369	1	2	1
Garson	318	1	2	0
Waskada	239	2	2	1
Napinka	132	1	1	1

1. Source: Manitoba Trucking Association, Manitoba Official Ship by Truck Directory, 1981-82

2. Source: Manitoba Bureau of Statistics, Manitoba Census Population 1971, 1976, 1981 Final Counts

Of the 78 selected communities served to/from Winnipeg by general freight carriers, Neepawa and Minnedosa have the most carriers serving them with four each. Three carriers serve Portage la Prairie, Winkler and Hartney to/from Winnipeg. Nineteen communities, including Brandon and Thompson, are served by two general freight carriers to/from Winnipeg. Fifty-four communities have one general freight carrier serving them to/from Winnipeg. From this discussion, it appears that the number of carriers serving a community bears little relation to the community population. Similar patterns hold for the total of all types of freight carriers to/from Winnipeg and to/from Brandon.

G. Commercial Trucks

A commercial truck is defined in section 2(6) of the HTA as follows:

- (6) "commercial truck" means, subject to subsection (2) of section 3, any truck not a public service vehicle, except
 - (i) a truck operated by or on behalf of the government, or a municipality, school board, or other public body;
 - (ii) a truck operated
 - (A) in, or within 30 kilometres of, any city, town or village, other than The City of Winnipeg, in which the registered owner thereof has his place of business; or
 - (B) where the owner thereof has his place of business in The City of Winnipeg, in, or within 20 kilometres of, The City of Winnipeg;where the registered owner thereof has his place of business;
 - (iii) subject to subsection (1) of section 3, a farm truck;

- (iv) a truck used for transporting gravel, sand, or other material for use in the construction or maintenance of a public highway; and
 - (v) a truck which the board, after examination of the circumstances, certifies in any year is not to be regulated, either as a public service vehicle or a commercial truck, in that year;
- Am.S.M.1971,c.79,s.1;S.M.1978,c.23,s.1

In practice, this rather incredible definition is taken to mean that commercial trucks are 'private' trucks, i.e. trucks operated by businesses to carry their own goods between urban centres in Manitoba and/or beyond its borders. It is also taken to mean that CT's are operated without compensation, because a PSV is defined as a truck operated for gain or compensation and because a CT is defined as a truck that is not a PSV. Section 254(e) of the HTA defines compensation as follows:

- (e) "toll", "gain", or "compensation" means the fee or rate charged or collected by any person for the carriage of passengers or property by a motor vehicle, and includes remuneration of any kind, paid or promised, directly or indirectly payable, whether for the use of all or part of the vehicle or for the services of the driver operating the vehicle."

Thus the 13,400 commercial trucks registered in Manitoba are supposed to be operated without compensation of any kind. That would seem to ut rather unrealistic constraints on businesses that distribute their products beyond the limits of an urban centre. As one might expect, that provision of the Act is widely ignored. The open disregard of the provision that private truckers may not charge compensation has led to charges by PSV carriers that the MTB

is negligent in enforcing the Act. Conflicting interests between PSV carriers and private truckers is one of the issues in motor transport regulation which will be discussed later.

Although section 291(1) of the HTA requires that the owner of a commercial truck shall, in addition to registering it, obtain a licence from the registrar authorizing its operations as a commercial truck, there are in practice no restrictions on obtaining a licence. Any business wishing to operate a commercial truck will obtain the necessary licence and registration.

There are no restrictions concerning the geographic area of operation of commercial trucks. The only requirement is that an extraprovincial licence is obtained for travel outside of Manitoba.

There are also no restrictions on the type of equipment used or commodities carried other than those related to maximum allowable weights and highway safety. These types of restrictions are applied to all vehicles and are not directed toward any particular licence classification.

The majority (91%) of commercial and local truck owners own from one to three trucks. This indicates that most commercial truck operations in Manitoba are small in size. Seven commercial truck owners have fleets of more than 30 trucks, which shows that there are some large fleets. This number is comparable to the 10 owners of more than 30 trucks found for the for-hire operations. The average fleet size is 2 trucks, again pointing to the predominance of small fleets. This is considerably smaller than the average fleet size of 6 trucks found for the for-hire operations.

The vast majority of commercial trucks are small; 65% are below 4,000 kg. About 8% or 9% have registered GVW that would indicate that they are semi-trailers. Even so, the number of large commercial trucks is only 30% smaller than the number of large PSV trucks registered in Manitoba.

H. Farm Trucks

Section 2(18) of the HTA defines a farm truck as a truck owned by a farmer. Section 2(15.1) defines a farmer as

"... a person, corporation or group of persons who own, rent, or lease land for the purpose of

- (i) growing crops or fodder for their use or sale;
- (ii) raising livestock or poultry for sale;
- (iii) operating a poultry establishment for the production of eggs for sale;
- (iv) operating a mink or fox establishment maintained for their pelts for sale or for sale as breeding stock;
- (v) operating a dairy establishment maintained for the production of milk or cream for sale;
- (vi) operating a feed lot upon which cattle are kept or fed for marketing;
- (vii) operating an apiary of hives of bees maintained for the production of honey for sale;

and in the opinion of the registrar the person, corporation or group of persons is engaged in one or more of these operations to a significant degree."

It may be noted that the Act leaves it up to the registrar to determine whether a person is engaged in farming to a significant degree. In registering a vehicle as a farm truck the owner makes the following declarations:

"... I am a farmer by reason of the fact that I OWN, RENT or LEASE LAND for the purpose of: growing crops or fodder; raising livestock or poultry; egg production; honey production; raising mink or fox; milk or cream production; operating a feed lot on which cattle are kept, and I am engaged in one or more of these operations for at least 3 months of the year."

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It may further be noted that there is no limit on the number of trucks a person may register as farm trucks if he meets the criteria of farmer.

Subsections 6(26) to 6(29) of the HTA permit a farmer who leases a truck for use in connection with his farming operation to register it in his name as a farm truck. This is an exception to the provision of section 6(1) that all motor vehicles must be registered by the owner.

The permitted use of farm trucks is set out in subsections 169.1(1) to 169.1(5) of the HTA. They read as follows:

Registration of farm truck.

169.1(1) No person, other than a farmer, shall register a truck as a farm truck.

Authorized use of farm truck.

169.1(2) A farm truck may be used by the registered owner thereof, or by a member of his family or his employee, for the transportation of

- (a) produce or products, including livestock, of his own farm; or
- (b) commodities or other property for use on his farm; or
- (c) produce or products of the farm other than milk, eggs and livestock belonging to another farmer; or

- (d) himself or members of his family, or his employees; or
- (e) property belonging to another farmer for use on that other farmer's farm.

Limitation on use of farm truck.

169.1(3) No person shall use a farm truck for the transportation of goods, wares, merchandise or other commodities, produce or livestock, or of persons, except as provided in subsection (2).

Farm truck not to be used for hire.

169.1(4) No person shall use a farm truck for the transportation of persons or property for hire, gain or reward or the hope or expectation thereof.

Operation of a farm truck for hire.

169.1(5) Notwithstanding subsection (4), a person may use a farm truck

- (a) to transport cereal grain, oil seeds or sugar beets from the farm where the crop was grown to a grain elevator or processing plant; or
- (a.1) to transport vegetables or fruit from the farm where the crop was grown to a processing plant or to market; or
- (b) in the case of a fire of or in a grain elevator, to transport grain stored in the grain elevator to a place directed by the owner of the grain elevator;

and may receive compensation therefore.

Basically, farm trucks may be used for all purposes connected with the owner's farm, and, if no compensation is charged for all purposes connected with another farm except to transport milk, eggs or livestock. Farm trucks may be used on a for-hire basis to transport grain, oil seeds, sugar beets, vegetables and fruit from the farm where the crop was grown to an elevator, processing plant or market. Other uses for gain or compensation are not permitted. There are no restrictions on the personal use of farm trucks, eg. recreation or driving to and from place of work if the registered owner has an occupation other than farming.

The vast majority of farm trucks, 62%, is under 4000 kg GW; another 32% are between 4000 kg and 14,000 kg. Some 2000 trucks or 3% are in the dual axle range and about 1,000 are of the semi trailer type.

I. Other Trucks

Other trucks are all trucks which do not fall in the categories of PSV, CT, or F. The HTA does not place any restrictions on the use of trucks other than those listed for the other three categories. Hence, the permitted use of T plated trucks must be derived from the definitions of PSV and commercial trucks. This means, in effect that a truck may be operated on a for-hire basis within a city, town or village or as a service vehicle

- within 30 km of any city, town or village where the owner has his business;
- within 20 km of the City of Winnipeg if the owner has his business in Winnipeg;
- to transport sand, gravel or other material for use in the construction or maintenance of a public highway;
- to transport commodities which the MTB has exempted from its regulations, and;
- in the service of the government, a municipality, a school board or other public body.

Nearly 88% of the T trucks in 1982 were small trucks under 4000 kg. Many of these would be personal-use trucks and vans. Of the T trucks over 4000 kg, more than 90% belonged to fleets of one to three trucks.

This indicates that most fleets are small in size. However, there are 23 fleets of more than 30 trucks, as compared to 7 and 10 fleets of this size for commercial and for-hire carriers

respectively. As well, 12 fleets of more than 40 T trucks have a total of 1,735 trucks for an average fleet size of 145 trucks. This indicates that there are some very large fleets of 'other' trucks. Despite this, the overall average fleet size is only 2 trucks, roughly the same as the average for commercial trucks.

Although trucks with GVW of more than 20,000 kg account for only 3.2% of all trucks in the T or 'other' category, their number, 2524, is greater than the total number of PSV vehicles licensed in Manitoba, and is double the number of CT trucks of similar size. Hence the residual category of 'other' trucks accounts for a substantial proportion of the total trucking capacity in the province.

J. Registration Fee Structure

Motor vehicle registration fees are prescribed by regulation under the HTA. The present fee schedules are set out in Manitoba Regulation 131/83, filed June 13, 1983. PSV and CT trucks pay the same registration fees which are higher than those applying to 'trucks other than farm trucks' which in turn are higher than those for farm trucks. For PSV and CT trucks up to 6000 lbs. (2730 kg) the registration fee is \$37.00; fees increase alternately by \$16 and \$17 for every 1000 lbs. increase in gross weight (\$33 per 2000 lbs increase in weight). Registration fees for farm trucks and other trucks up to 6000 lbs gross weight are \$22.00; for trucks other than farm trucks, they increase by \$7 per 1000 lbs increase in gross weight (there are some intervals of \$6 as well) for farm trucks by about half that amount. Obviously, staff responsible for constructing the schedules have not yet made a successful conversion to the metric system. The metric equivalents in the schedules increase by amounts varying from 420 kg to 460 kg. The fee schedules do not appear to be based on any particular rationale; they appear to have evolved by applying, from time to time, increases to schedules established in the dim past.

A small sub class of PSV and CT trucks, also a relic of the past, consists of trucks used solely to transport milk and cream from farms to processing plants. A separate, and lower fee schedule was established for milk and cream trucks in 1934; and there is still a separate fee schedule for milk and cream trucks today, although there appears to be no reason for it other than that it has always been there.

A comparison of current registration fees for trucks in the four categories is shown in Table 6, with weight intervals of 10,000 lbs.

TABLE 6

Registration Fees for Trucks By Classification and Gross Vehicle Weight

Gross Weight (pounds)	Annual Registration Fees			
	PSV and CT Trucks	Milk & Cream Trucks	Other Trucks	Farm Trucks
Up to 6,000	\$ 37	\$ 31	\$ 22	\$ 22
10,001 - 11,000	119	86	56	39
20,001 - 21,000	284	196	124	75
30,001 - 31,000	449	306	193	111
40,001 - 41,000	618	416	262	147
50,001 - 51,000	878	526	331	182
60,001 - 61,000	1233	636	400	218
70,001 - 71,000	1588	746	468	254
80,001 - 81,000	1947	856	537	293
90,001 - 91,000	2307	-	606	333
100,001 - 101,000	2662	-	675	373
110,001 - 111,000	3021	-	744	413
120,001 - 121,000	3381	-	814	453

K. Summary

The Manitoba Highway Traffic Act defines four categories of trucks and sets out the purposes for which they may be used. To that extent, all trucking in the province is regulated, although it is customary to speak of the common carriers or for-hire trucking as being the regulated sector of the industry. If one were to judge by the number of PSV trucks registered in Manitoba, the common carrier fleet would account for only 1.5% of all registered trucks. However, that would not represent an accurate reflection of the size and importance of the for-hire trucking industry. It would appear that Manitoba trucking companies register most of their trucks that operate interprovincially in other provinces. Also, the PSV category has a preponderance of trucks in the high GVW ranges. Nevertheless, the numbers and capacity of trucks in the other three categories far exceed the PSV trucks registered in Manitoba.

SECTION III

PRINCIPAL ELEMENTS OF REGULATION

The regulated system of motor transport which has been described in the preceding pages has evolved as the result of policy decisions made over the past fifty years or more. It is useful to briefly examine the basic principles upon which the regulated system is based.

A. Local Control Over Local Enterprise

Historically, the first important element in motor transport regulation may be expressed as "local control over local enterprise". Amendments to the Motor Vehicle Act in 1912 authorized municipalities to license automobile liveries or "persons letting or having motor vehicles for hire or gain", and to "make rules and regulations for controlling such business or occupation". The principle of local control over local enterprise has been maintained to this day. Municipal authority to license and regulate livery and taxicab business within the municipality is provided for in Section 22 of the HTA.

The only exception to the rule of local control over local transportation is the Taxicab Act which regulates the taxi business in Winnipeg. The Taxicab Act was enacted in 1935, after it became clear that the councils of Winnipeg and other municipalities making up the Greater Winnipeg area could not be persuaded to regulate the taxicab business themselves.

In the 1930's, an area within 6 miles of a city, town or village was considered local; today there are actually two differently defined local areas. The public service vehicle definition excepts

"motor vehicles operated for gain or compensation under the Taxicab Act or a municipal by-law in cities, towns or villages". Section 2(h) of Regulation 231/73 exempts a motor vehicle when it involves:

- (h) "the operation by a local drayman within 24 kilometre radius of the city, town or village where he carries on his draying business, provided that such operation shall be for single isolated trips and not for the use of such vehicles on a regular route for the transportation of property for compensation and provided that where such service is to or from Winnipeg, the local drayman shall obtain a letter permit from the Motor Transport Board.

On the other hand a truck is defined not to be a commercial truck if it is operated within 30 km of the city, town or village where the business is located, except when the business is located in the City of Winnipeg in which case the limit is set at 20 km from the Perimeter Highway.

B. Entry Control and Rate Control

The second important element in motor transport regulation is the authority vested in the Motor Transport Board to control the business of transportation between points in Manitoba. The origins of the MTB can be traced back to the establishment of the Municipal and Public Utilities Board (MPUB) in 1912 which had the authority, among others, to regulate the Winnipeg Electric Railway Company and the Winnipeg - Selkirk - Lake Winnipeg Railway Company. Specific regulation of motor transport of passengers and express freight was vested in the MPUB in 1926, and in 1930 the Highway Traffic Act was enacted which placed the operation of all public service vehicles, buses and trucks, under the authority of the MPUB. From an enlarged committee of the MPUB, the MTB evolved into a separate board in 1955.

The principal objective of regulation was and is to assure the public (in rural communities) of adequate, reliable transportation services at reasonable rates. This implies of course, that there is a prevailing thought that if the provision of transportation services were left to the free play of market forces, services might be less adequate and reliable and/or perhaps more expensive than under regulation.

Examination of the history of regulation in Manitoba leaves no doubt that in the early days of the province there was widespread and probably well founded concern over monopoly pricing practices in transportation. Following the completion of the CPR mainline, the monopoly position of the railway and the absence of a rate setting authority to curb what were considered exorbitant freight rates were seen as factors retarding the development of the west. Thus, public control over freight rates became an essential element of national policy.

Public control over rate setting was achieved in various ways: such as the Crow's Nest Pass Agreement, subsidy agreements between the federal government and the builders of the Canadian Northern and Grand Trunk Pacific Railways, as conditions for an agreement by the Manitoba Government to guarantee Canadian Northern Railway bonds, and through provincial legislation. The Public Utilities Act was enacted in 1912. Public utilities were defined as "enterprises subject to the jurisdiction of the Province, owning or operating telegraph, telephone, railway or tramway transportation, or furnishing water, gas, heat, light or power, and the Manitoba Government telephones and grain elevators". These political and legislative initiatives indicate the concern of governments to protect the public from possible abuse of monopoly power.

However, by 1930, when the Highway Traffic Act was enacted government concern over possible abuse of monopoly power appeared to have given way to concern over potentially harmful effects of competition. The Act provided for entry control by the Municipal and Public Utilities Board, i.e. a certificate from the Board was required to operate a PSV and the Board would not issue a certificate if it deemed that existing transportation services were sufficient. The Act also gave the Board authority to "fix maximum or minimum tolls, fares or charges". The first tariff of tolls set by the Board went into effect on the first of May, 1931.

The Board's concern over the potentially harmful effects of competition was expressed in its Annual Report for 1930: "Protests against truck operations have been received at ...various times from railways and rural towns and villages. If motor truck competition materially increases, some branch railway lines must be detrimentally affected. Whether these communities can wisely be permitted to be deprived of railway services, in our climatic conditions, will then become a serious question of public policy."

The Board's concern over "the effect of motor truck competition on the branch railway lines of the Province" is repeated in the annual report of the following year. However, the Board makes no recommendations. The report does note that "... with the reduction in train service on some of the branch lines, a notable increase in the number of applications for truck route privileges is recorded".

Short of prohibiting the use of trucks altogether there was little the Board could do to prevent motor carriers from gradually taking over the intra-provincial less-than-carload freight traffic from the railways. However, the Board remained concerned with the potential effects of competition on transportation services to and

from rural communities. In essence, the policy of the Board over the past fifty years has been to limit the number of freight carriers that could serve any particular market, route or community. The aim of restricting competition was and is to provide a measure of economic stability to the carriers, who in turn can be expected to provide uninterrupted and reliable service to the communities. To prevent carriers from exploiting the protection provided by the Board, the Board prescribes the rates at which the transportation services must be provided by means of a tariff of tolls. Thus the two pillars of the regulated system are entry control and rate control. Entry control restricts competition and protects the carriers; rate control protects the users of transportation services.

C. The Process

The process whereby the regulated system is administered has also changed very little over the past fifty years, at least in its essentials, although apparently it has become more formal and probably more expensive to would-be entrants. The process may be described as follows:

1. A person (or company) wishing to get into the trucking business in Manitoba, or a person already in the trucking business wishing to expand his services, say into other communities must inform the Motor Transport Board of his intentions to obtain (or modify) an operating authority setting out the kind of services he wishes to provide.
2. The Board responds with a confirmation of its understanding of the application, set out in the manner and style in which it will be advertised.

3. The applicant responds to the Board reaffirming the application.
4. The Board publishes the application in the Manitoba Gazette.
5. Parties having a direct interest in the application must file with the Board written notice of intent to oppose the application or otherwise participate in the hearing, within 10 days from the date of publication in the Manitoba Gazette.
6. The Board notifies the applicant of the names of opposing or intervening parties.
7. The Board schedules a date for hearing the application and notifies all parties of the time and place.
8. At the hearing the applicant must produce evidence to show that public convenience will be advanced or promoted by the service he wishes to provide - that granting an operating authority will result in an improved distribution system with the welfare of the general public being advanced.

The applicant normally attempts to prove his case by bringing shipper witnesses who attest to the necessity of the service. These shippers explain why they need the service, how they would propose to use it, the existing alternatives they have examined or employed and the probable effects on their shipping patterns and markets if the authority is granted and the effects if the authority is denied. The applicant must also demonstrate to the Board's satisfaction that he is fit, willing and able to provide the service applied for.

Criteria for fitness of an applicant carrier could include past experience in similar circumstances, the honesty and integrity of the management and the availability of the financial, human and physical resources appropriate for the successful execution of the proposed service, if authorized.

The Board conducts its hearings in the manner of a Court. While it generally follows the rules of evidence of the judicial system, the Board is not rigid in its procedural process, and permits a high degree of latitude for all participants to present their testimony. The Board is more concerned with learning the views, concerns and opinions of all parties, than with Court protocol. Usually, the applicant as well as the intervening parties are represented and assisted by legal counsel.

Opposing or intervening parties are usually the existing carrier or carriers whose business would be affected if the application were approved and if an operating authority were granted to a new entrant into the market.

Generally, the onus is on the applicant to prove that the public interest will be promoted if he is granted an operating authority; the opposing parties do not have to demonstrate that the public interest will be harmed by the entry of an additional competitor.

9. Following the hearing the Board decides whether to approve the application, approve the application with some exceptions or restrictions, or deny the application, and notifies the parties involved. If approved, the applicant will receive an operating authority setting out the services he may provide.

It is evident from the above that the process is cumbersome, time consuming and often expensive. By virtue of its complexity the process itself becomes a barrier to entry. The process tends to favour those who are already in the industry and who are acquainted with it, and who employ the law firms that have built up expertise in the field of transport regulation.

D. Control Mechanism: Ownership and Registration of Motor Vehicles

The fourth important element of the regulated system is the mechanism which is used or meant to be used to enforce it. Regulations are ineffective if the means to enforce them are ineffective.

Section 255(1) of the Highway Traffic Act provides that:

"The Transport Board has a general supervision over motor carriers and operators of public service vehicles and commercial trucks in their relations to the public, the railways, and to one another..."

and sets out the powers of the Board.

As described above, the Board exercises its supervision over for-hire motor carriers (operating PSV) by means of operating authorities. The Board's supervision over commercial trucks is only indirect; its primary concern is to ensure that commercial trucks are not operated on a for-hire basis. The HTA does not place farm trucks and other trucks under the supervision of the Board. In the final analysis then, control of the regulated system depends on the classification and registration of trucks.

The definitions that govern the classification of trucks have been described earlier.

Section 6 of the HTA provides that the owner of a motor vehicle must register the vehicle with the Registrar. An exception is the provision in subsections 6(26) to 6(29) which permits farmers to register leased trucks in their name. There are no other exceptions to the requirement that the vehicle must be registered by its owner. Section 258(1) provides that the registration of a public service vehicle must be approved by the Motor Transport

Board. Section 291(1) requires that the owner of a commercial truck "... shall, in addition to registering it, obtain a license from the registrar authorizing its operation as a commercial truck".

Hence, for the purposes of enforcing the Act and the regulations, enforcement officers must determine whether the truck is properly registered and whether it is being used for the purposes for which it has been registered. The ultimate control mechanism of the regulated system is, therefore, the ownership and registration of trucks. The complicated and confusing definitions of the various classifications of trucks pose serious problems in enforcement. These problems are compounded by practices adapted in the trucking industry which, while seemingly of dubious legality have gone largely unchallenged.

E. Interprovincial Regulations

While the federal government has jurisdiction over interprovincial transportation, the regulatory functions are performed by the provincial boards. Interprovincial transportation by road was fairly insignificant until the early 1950's. By that time motor transport within the provinces had been subject to regulation for twenty years or more, and the provincial transport boards had acquired a good deal of experience in regulation. A dispute

between an American bus company operating between Boston and Halifax and the Province of New Brunswick over the right to transport passengers from point to point within the province was ultimately decided by the Judicial Committee of the Privy Council in favour of the bus company. The JCPC held that while "the taking up and setting down of passengers journeying wholly within the province", could be severed from the rest of the undertaking, it was in this case an indispensable part of the international and interprovincial operation. Attempts by the province to regulate the bus line were therefore ultra vires the province. Thus, the federal government found that it had a good deal more jurisdiction over transportation than it had expected and certainly more than it cared to exercise. In response, Parliament passed the Motor Vehicle Transport Act which designated the provincial motor transport boards as federal boards, and delegated power to regulate extra-provincial highway transport to these boards.

Interprovincial motor transport began to assume importance in 1951 when the Manitoba Board approved applications for the transportation of general freight to and from southern Ontario and to and from British Columbia. In the same year the Board also licensed 18 operators (42 public service vehicle licenses) to haul automobiles from eastern Canada. Since there was as yet no federal legislation covering interprovincial motor transport there was some confusion over the jurisdiction of provincial boards over such traffic. It appears that unlicensed truckers developed a considerable amount of business in interprovincial trucking. The federal Motor Vehicle Transport Act came into force on August 1, 1954. As explained above, the Act essentially left the regulation of interprovincial motor transport to the existing provincial authorities. This necessitated cooperation and coordination between the provincial authorities. The Manitoba Board reported that it was "pursuing a vigorous program to control interprovincial trucking". (Annual Report, 1954)

In its 1955 report the Board stated:

"By January 1955 the Manitoba Provincial Transport Board had made plans to control interprovincial trucking. Notices were posted to all truckers operating into, through, or out of Manitoba to obtain authority from the Manitoba Provincial Transport Board forthwith. This program took many unlicensed or 'gypsy' operators off the road, and by April 30, 1955, nearly all freight was being handled by legitimate carriers. This had a stabilizing effect on the industry."

As observed earlier, the regulation of interprovincial highway transportation required cooperation and coordination among provincial authorities.

In 1954, Manitoba's Premier Campbell invited representatives from all provinces to a conference to discuss interprovincial coordination of regulations regarding highway traffic and motor transport. Since then interprovincial meetings of regulatory bodies were held annually. This led to the formation of the Canadian Conference of Motor Transport Administrators (CCMTA) with a permanent secretariat. Although CCMTA is itself not a regulatory body it provides a ready mechanism for directing discussion and examination of issues connected with highway traffic. Another mechanism of interprovincial cooperation is the holding of Concurrent Board Hearings of application for interprovincial operating authorities. Concurrent hearings of application are sometimes held where the same or similar evidence is required by two or more provincial Boards; this may save costs to both the government and the industry. However, each Board forms its own conclusions and makes its own decisions on the granting of operating authorities.

Other efforts in interprovincial cooperation in highway transportation cover such areas as the Canadian Agreement on Vehicle Registration (CAVR) and fuel tax collection arrangements both of which require the pro-rating of distances driven over the highways of the various provinces by the trucks of interprovincial motor carriers.

Finally, it may be noted that the provincial boards have not attempted to establish controls over freight rates in interprovincial transportation. Thus, while the entry of motor carriers is controlled in the same way as in transport within the province, transportation rates are determined through competition rather than by regulation.

In 1967, the National Transportation Act was enacted by Parliament, Section 1 of the Act declares that an efficient transportation system making the best use of all available modes of transportation is essential to maintain the economic well-being and growth of Canada, and that the objectives are most likely to be achieved when regulation will not restrict the ability of any mode of transport to compete freely with other modes of transport, and when each mode of transport bears a fair proportion of the real costs of the resources provided to that mode at public expense. Thus the Act placed great emphasis on intermodal competition, and, with few exceptions, the Act abolished the system of controls over railway freight rates which had been administered under the Railway Act. Hence railway transport was substantially deregulated in 1967.

Part III of the National Transportation Act provides for the regulation of extra-provincial motor vehicle transport by the Canadian Transport Commission. However, that part of the Act has not been proclaimed, so that the system of regulation by provincial boards under powers delegated to them by the federal Motor Vehicle

Transport Act is still in force. It is clear, however, that the federal government has the statutory means to assume jurisdiction over interprovincial motor transport if and when it decides that it is in the national interest to assume that responsibility.

SECTION IV

PROBLEMS AND ISSUES IN REGULATION

A. The Trend Towards Reducing Regulations

In the late 1970's the pervasive role of government in all areas of activity and the prodigious rate at which government regulations were growing became a matter of serious concern. At the meeting of First Ministers, February 13-15, 1978, the Premier of Manitoba proposed that a federal-provincial committee be established to review all regulatory activities in order to determine areas of overlap between jurisdictions. Other premiers supported the idea of a task force to deal with the problem. The Prime Minister suggested that it might be useful to involve the Economic Council of Canada. The communiqué issued at the end of the meeting said in part:

"The burden of government regulation of the private sector should be reduced and the burden of overlapping federal and provincial jurisdictions should be eliminated. Procedures will be instituted to review the effects of regulatory action on jobs and costs. First Ministers agreed that the whole matter of economic regulation at all levels of government should be referred to the Economic Council for recommendations for action, in consultation with the provinces and the private sector."

In the course of the following three years the Economic Council conducted a great number of studies on regulation covering many industries, including trucking. In its report, "Reforming Regulation" the Council recommended that regulation of the trucking industry be substantially reduced.

In the United States, meanwhile, the drive for regulatory reform was well underway. In 1980 Congress passed legislation that greatly reduced government controls over entry and rates in the airline, railway and trucking industries. This type of regulatory reform has become known as deregulation.

Government regulation affects virtually all aspects of highway transportation. The government builds and maintains the roads over which the motor carriers operate; it sets the rules of the road; it regulates the traffic and polices the highway system; it prescribes equipment safety standards and it sets limits on the weights and dimensions of motor vehicles. Last but not least the government sets fees and fuel tax rates and collects payment for the use of the roads. Viewed in that context, motor transport will always be a "regulated" industry and in that context it is a misleading to talk about deregulation.

The term "deregulation" has become attached to initiatives to reduce government involvement in the market for transportation services. In other words, deregulation means that government agencies withdraw from or reduce their involvement in deciding who may provide transportation services and at what price. In the United States it has meant that the Interstate Commerce Commission (ICC) no longer prohibits anyone from getting into the transportation business, and that it will issue a licence to any company applying for one.

Deregulation has had a major impact on the trucking industry and on the shipping public in the United States. It is reported that since deregulation the number of carriers in the U.S. nearly doubled from about 16,000 to more than 30,000. At the same time, however, the 5 largest trucking companies are said to have increased their share of the market from 29% in 1979 to 50% in

1983. Trucking rates are estimated to have declined by 30%. It must be kept in mind, of course, that deregulation coincided with a severe recession; truck rates might not have declined by as much if the recession had not occurred. Nevertheless, many shippers must have viewed the decline in rates as a welcome benefit from deregulation. On the other hand, it may have been a harrowing experience for many a trucking company.

Another by-product of deregulation was a dispute between the U.S. and Canada over the issuance of trucking licences. U.S. truckers charged that while Canadian trucking companies could freely obtain licences in the U.S., U.S. truckers had to go through arduous application procedures in each of the Canadian provinces to obtain a licence, and were frequently denied. They considered that to be discrimination. Their lobbying with Congress resulted in a temporary moratorium on the issuing of licences to Canadian companies. The moratorium was lifted after the ICC found that the charge of discrimination was unsubstantiated (Canadian companies had to go through the same application processes with provincial boards), and a Canada - U.S. committee was established to deal with transborder trucking issues. However, renewed charges of discrimination have been levelled against Canada by U.S. officials following the denial by the Ontario Transport Board of applications by Yellow Freight Systems Inc. of Overland Park, Kansas and by Roadway Express Inc. of Akron, Ohio.¹ It seems reasonable

to expect continued pressure on Canadian regulatory authorities to relax entry controls along the lines pursued in the U.S.

Thus deregulation in the U.S. has added momentum to the process of reviewing regulations which is continuing in Canada.

¹ Globe and Mail, April 9, 1984

In 1976 the Ontario Legislative Assembly established a Select Committee on Highway Transportation of Goods. The Committee produced a report of 1235 pages containing 233 recommendations. One recommendation was that the government establish a committee to review the Public Commercial Vehicles Act (PCVA). The PCV Review Committee was established in 1981 and published its final report "Responsible Trucking" in June 1983.

The principal recommendations of the report include:

- simplification of the truck licensing system;
- revised entry tests; instead of proving public need and convenience the tests should be based on fitness and in rare occasions the effects of a new entrant on the market;
- simplification of Board procedures;
- provision for policy direction and appeals;
- performance controls, including the implementation of a Commercial Vehicle Operator Registration (CVOR) system, and;
- improved enforcement.

Because nearly all of Manitoba's major trucking companies also operate in Ontario that province's regulations will have a major impact on Manitoba companies. Compatibility of Manitoba regulations with those in Ontario is therefore highly desirable, and, where interprovincial trucking is concerned, essential. For that reason, the compatibility of the recommendations in this report of the Task Force with those of the Ontario PCV Review Committee has been an important consideration. At this point, it may be noted that the recommendations made by the Ontario Committee represent a major change from the present system of entry controls, but that they differ markedly from the deregulation methods adopted in the U.S.

Last but not least, the ultimate jurisdiction of the federal government over interprovincial transport may be mentioned as one more element exerting pressure towards reducing regulation. This should not be interpreted to mean that the federal government has exerted pressure on the provinces to deregulate; rather, provincial agencies are conscious of the fact that divergent provincial objectives in transportation policies, too great a variation in entry requirements among provinces, and a multiplicity of compliance requirements on motor transport companies may leave the federal government with no options but to assume control. This consciousness of the constraints within which the provincial boards operate tends to move the regulatory system in the direction of the provinces which favour the least regulation.

Recent statements by the present Minister of Transport for Canada indicating a preference for reducing regulations serve to heighten that awareness of provincial agencies.

In summary, renewed emphasis on the merits of private enterprise and private initiative, concern that government regulations impose burdens on the private sector, deregulation in the U.S. and difficulties with the present regulatory system administered by the Canadian provinces are among the factors that have prompted Canadian institutions to review their regulations, and to move the system in a direction of fewer regulatory controls.

B. Specific Problems and Issues in Regulation

1. Enforcement of Regulations

Among the reasons for launching the review of motor transport regulations were complaints by the Manitoba Trucking Association that the regulations were not being enforced effectively, and that

persons or companies were engaged in for-hire trucking without having the required operating authority from the Motor Transport Board.

The relevant provisions of the Highway Traffic Act which set the framework for the regulated system have been described earlier in this report. The legal basis of the regulated system consists of the definitions of the various classes of trucks, the registration of trucks, regulation exempting trucks used to transport certain commodities from the requirement to have a PSV registration, and the operating authorities issued by the Motor Transport Board.

Enforcement of the H.T.A. and the regulations are a police function. Effective enforcement cannot be achieved by simply devoting more resources to the task. A review of literature on policing reveals that the basic concerns about enforcement of the Highway Traffic Act and Motor Transport Board regulations are similar to concerns expressed about the overall enforcement of other laws in our society. An understanding of the environment in which the rules are supposed to operate is essential.

Underlying the enforcement of laws in our society is a conflict between the personal freedoms valued by society and a set of rules designed to maintain a desired state of order. Similarly, the economic laws and regulations establish a 'restricted' enterprise environment for the motor carrier industry in a society which generally expresses a preference for 'free' enterprise. Moreover, the forbidden activity is neither morally reprehensible nor clearly destructive of society itself. Thus, the decision to allocate more or fewer resources to enforcement may be determined not by the amount of resources needed to achieve complete enforcement but by the purpose of the rules.

All statutes are written in a way that implies that they must be enforced at all times, but the public would not tolerate that degree of enforcement. For example, an anti-jaywalking by-law is unlikely to permit any exceptions yet society would find the zealous enforcement of such a law by its police intolerable. The police must exercise discretion in the enforcement of laws. Similarly any enforcement agency given the responsibility to maintain the rules of economic regulation in the motor carrier industry must exercise due discretion in enforcement.

Most commentators on policing recognize that it is erroneous to perceive the role of a police force as abolishing all violations of all laws. Rather, the authority for enforcing laws provides the police with the right to intervene when the public interest is threatened. Similarly, the agency responsible for enforcing the Highway Traffic Act and the Motor Transport Board regulations cannot be expected to entirely eliminate 'illegal' trucking, but to prevent it from jeopardizing the orderly provision of transport services in the province.

Unmet expectations about what an enforcement agency should do are not the only cause of complaints. The wording of the current legislation and operating authorities frequently frustrates enforcement. The legislation has failed to keep pace with changes in the organization of the trucking industry.

This section will describe the enforcement system and some of the current problems in enforcement of the regulations.

2. Enforcement Organisation and Operation

Enforcement of motor carrier regulations is conducted mainly by the Traffic Inspection section of the Department of Highways and Transportation and inspectors within the Motor Transport Board.

Where necessary, the RCMP provide assistance in investigations. Violations of regulations may be handled at hearings held by the Motor Transport Board or the Board may request the Attorney-General's Department to prosecute the matter in the court system.

In addition to checking for violations of the motor carrier regulations, the traffic inspectors have responsibility for enforcing weight and truck safety regulations. They also issue single trip permits to extra-provincial trucks who appear at border points sporadically without operating authorities for Manitoba.

The Traffic Inspection staff consists of 55 traffic inspectors including the Chief Inspector and supervisors and one clerk typist. Twenty-five are employed at nine permanent stations. Each of the permanent stations has weigh scales. An additional three specialized scales are located at Dauphin, Swan River, and Pine Falls. These three are only operated during the spring weight restriction period or when a particular haul, such as the pulp haul, is in operation.

Two of the permanent stations are operated on a twenty-four hour, seven days per week schedule. Six are operated sixteen hours per day, five days a week. The last station is operated 8 hours per day on intermittent shifts five days a week. Stations not normally manned for a twenty-four hour shift are frequently manned for a twenty-four hour day shift for several days a week when the additional inspectors can be assembled. Whenever the stations are not operated on a twenty-four hour basis, truckers who knowingly violate any regulation may try to pass the station during off-hours to avoid detection. By randomly extending the operating hours to a full day, the inspection section seeks to catch these violators. Such full day operations are useful for several days only because truckers will tell other truckers about the inspection. Truckers

who knowingly violate the rules will then take alternate routes to bypass the station. Manning all stations on a twenty-four hours, seven days a week basis may not be more effective because all but one station are located where at least one alternative route to bypass the station exists. The inclination to avoid inspection is probably mainly related to weight restrictions and less to regulations respecting safety and operating authorities.

The inspection force is also mobile. At key locations throughout the province, extensions of the shoulder of the highway (blisters) are constructed. Portable platform scales are operated at intermittent hours during daylight. The mobile sections patrol the highways and roads not controlled by the permanent stations.

When the inspectors suspect an operating authority is being violated, they prepare a report. The Traffic Inspection Section has two inspectors who investigate these reports and lay charges where warranted.

Table 7 provides statistics indicating the activity of the Traffic Inspection unit. Note the large number of single trip certificates requiring completion.

TABLE 7

Inspection Statistics 1982/83

Inspection Reports	3,940
Inspection Notices	1,167
Single Trip Certificates	15,495
Transit Licenses	1,423
Motive Fuel Tax Certificates	12,120
Written Complaints Investigated	96
Total Prosecutions	2,780
Written Warnings	387
 Total Fines and Costs	 \$ 230,582.72

Source: Traffic Inspection Section

In Table 8, the number of prosecutions and warnings for violations of the Highway Traffic Act in 1982-83 are listed. Most of these offences are related to highway use and equipment violations. About 9% of the violations are related to violations of the various rules established to regulate the industry.

TABLE 8

Prosecutions and Warnings for
Violations of the Highway Traffic Act 1982/83

<u>Type of Violation</u>	<u>Prosecutions</u>	<u>Warnings</u>	<u>Total</u>
Weights and Dimensions	2302	345	2647
Faulty Equipment & Safety	94	10	104
Motor Carrier Operations			
PSV Identification	137	3	140
Owner Identification	34	1	35
Improper Licence Plates	18	1	19
Non-Registration	34	7	41
Failure to Produce Proper Papers	25	3	28
No CT Licence	<u>28</u>	<u>2</u>	<u>30</u>
Subtotal	<u>276</u>	<u>17</u>	<u>293</u>
Other Licensing	108	14	122
	<u> </u>	<u> </u>	<u> </u>
Total	2780	386	3166

Source: Derived from data supplied by Traffic Inspection Section.

3. Difficulties in Enforcement

It is clear from the above data that substantial resources are devoted to the enforcement of the truck transport provisions of the HTA, and that it is erroneous to say that the province is negligent or reluctant to enforce the Act. On the other hand it cannot be denied that there are difficulties in enforcing the Act.

Earlier in this report (p.41) the observation was made that the ultimate control mechanism of the regulated system is the ownership and registration of trucks, and that the complicated and confusing definitions of the various classifications of trucks pose serious problems in enforcement. It was further observed that these problems are compounded by business practices adapted in the trucking industry which, while seemingly of dubious legality have gone largely unchallenged.

a) Leasing

By far the most significant business practice causing difficulties in enforcing Part VIII of the HTA is the leasing of equipment and drivers. Leasing of equipment became popular in the early 1960's partly because it reduces the capital requirements of the lessee while providing the lessor with significant tax write-offs. In the beginning most leasing arrangements were executed through banks and acceptance corporations. Today, many companies, including trucking companies have created their own leasing corporations.

Were it not for restrictions placed on the practice by legislation, leasing provides shippers with an alternative that is more flexible than using their own trucks and drivers or

than shipping with regulated carriers. Leasing arrangements (or rentals) can be tailor-made to suit the needs of the shipper with respect to type and size of equipment, length of use (hours, days, months) and with or without operator. Having one's own equipment and drivers may be more costly for many companies, and shipping by common carrier may involve having to deal with many carriers (eg. most Manitoba communities are served by different carriers) and may be more costly as well.

Because of the obvious advantages that such leasing arrangements could provide to many shippers, unrestricted leasing could cause havoc with the regulated system. If there were no restrictions on leasing, companies in the rental business could provide trucking services to all shippers in all parts of Manitoba. For all practical purposes, then, rental companies would have blanket operating authorities, which in effect would mean the end of the protection which the regulations now provide to the regulated carriers.

To forestall that development, subsections 258.1(1) to 258.1(7) of the HTA put stringent restrictions on the use of leased trucks. A person wishing to lease a truck with GVW of more than 28000 pounds must obtain a permit from the Motor Transport Board. In applying for a permit, he must furnish the Board with the following information:

- 1) The purpose for which the truck is proposed to be leased or rented.
- 2) The contractual arrangements, if any, between the lessee and lessor.
- 3) The nature and ownership of goods or property to be transported together with the point of origin and destination of the goods or property to be transported.

- 4) The period for which the truck will be leased or rented.
 - 5) Where the driver of the truck will be a person other than the lessee, the name of the driver and the name of the person by whom the driver is employed.
- (Section 258.1(5))

The Board may deny any application for a permit if it is satisfied that it is not in the interest of the public, or the board may issue a permit subject to such conditions or terms as the board may deem necessary in the public interest.

One might say that these provisions of the HTA give the MTB virtually arbitrary power over the type of leasing arrangements companies may or may not conclude. Generally speaking, the Board has used these powers to severely restrict the flexibility inherent in leasing arrangements in order to protect the regulated carriers.

b) Owner-Operators

There are many variations to leasing arrangements in the trucking industry. A company may lease a truck (tractor unit) to a driver for a fixed sum per month; in turn the driver may lease it and his own services back to the company on a rate-per-mile basis. Perhaps more frequently, a driver purchases a truck (sometimes through the company he works for) and leases it and his services to the company, usually on a per-mile basis but sometimes on a percentage of revenue basis. Drivers who enter into such arrangements are no longer employees of the company they work for. They are commonly called owner-operators or brokers or driver-owners. In this report, we shall refer to them as owner-operators.

Similar arrangements with owner-operators exist in private trucking, ie. companies that are not in the trucking business but whose business involves a good deal of transportation, such as wholesalers, distributors, chain stores, lumber yard franchises, etc.

Typically, the contracts between owner-operators and the companies that employ them are exclusive contracts, ie. the owner-operator agrees that his truck shall be used only in the service of that company. Typically also, the company requires that the truck shall be painted in the company's colors, bear the company's name, be maintained and repaired in the company's shops at the owner's expense, that the owner-operator purchase his fuel at stations designated by the company, that the company arrange for the insurance at the owner's expense, and that the company shall obtain the registration and licences at the owner's expense. In order to enable the company to obtain the licences and insurance the owner-operator usually "transfers" the "ownership" of the truck to the company for the duration of the contract. However, the company assumes no responsibility for any lien or encumbrance on the truck; payments to discharge a lien or chattel mortgage on the truck remain the responsibility of the owner-operator.

The advantages of such arrangements can be substantial. From a company point of view, the arrangement reduces its capital requirements and hence its risks; it provides a powerful incentive to the drivers to take good care of the equipment; it is an incentive to drivers to work many hours at a flat rate per mile because their income depends on miles driven; it makes, therefore, fuller use of equipment and reduces per-unit costs; and it saves the company extra costs of overtime payments as well as payment of CPP and UI premiums and payroll taxes.

Lastly, if the company's workforce is unionized the bargaining power of the union is reduced as drivers are converted from employees to owner-operators.

The owner-operator may see his benefit in having an opportunity to earn more money than he might make as an employee, particularly when times are good. He may derive satisfaction from the ownership of a truck and of feeling independent. He may see the arrangement as a first step towards establishing his own business and as a way of gaining entry into a business sector which is otherwise difficult to enter because of government regulations.

Because in most instances the companies register and insure the trucks it is not known how many owner-operators there are in Canada, but their number is thought to be large. In Manitoba the practice in recent years has been to register trucks in the name of both the owner and the lessee. According to the vehicle registration file of December 1982, 699 of the 1996 PSV trucks over 4000 kg GVW were subcontracted. Thus 35% of the trucks in for-hire transport registered in Manitoba belonged to individual owner-operators or to larger subcontractors who could be described as owner-operators on a larger scale. However, as indicated earlier (p. 21) many Manitoba based carriers in interprovincial transportation register their trucks in other provinces, so that the total number of owner-operators working for Manitoba truckers is not known. It is known, though, that a few Manitoba trucking companies use only owner-operators and do not have trucks of their own.

Of the commercial trucks, 277 or 6% of the total CT plated trucks over 4000 kg were subcontracted. Another 355 CT trucks were on straight lease without a driver.

If it is considered that the HTA requires that the owner must register the motor vehicle, the arrangements between owner-operators and the companies that employ them are of questionable legality. The owner-operators do not hold "a certificate approved by the transport board" as required by Section 258(1) of the HTA and therefore, they cannot register their trucks as a PSV in their own name. The truck is registered nevertheless but it is registered on the strength of the agreement between the owner-operator and the company, and it is operated under the authority of the carrier who has been licensed by the Board. If for whatever reason the contract between the owner-operator and the company is terminated, the company retrieves the plates and the registration is cancelled. In fact, then, the truck is registered at the pleasure of the company rather than on the basis of ownership.

Furthermore, the owner-operator operates a truck for gain and compensation which he may not do unless he has a certificate approved by the Board, which he does not have. If the owner-operator works for a company with a CT licence, the conflict with the HTA is even more clear, since a commercial truck is assumed not to be operated for compensation.

It may be concluded that the employment of owner-operators by motor carriers, (PSV and CT) does not conform with the provisions of the HTA. Specifically:

1. Section 6(1) of the Act requires that the owner must register the vehicle.

Section 6(6) requires the registrar to issue to the owner "... a numbered registration card bearing the ... name and address of the registered owner ... and he shall cause the name of the owner, his address and the number and particulars of the registration card to be recorded."

Section 6(16) says that: "Before registering a vehicle the registrar may require proof of the ownership thereof."

Section 7(5) says that: "Every number plate furnished by the registrar is, and shall remain, the property of the Crown and shall be returned to the registrar when required by him."

It may be noted that the HDA makes no provision for "dual" registration (or "reregistration" as it is sometimes called) of a truck in the name of the owner and of the company he works for. As we have seen, only farmers have the privilege of registering a leased truck in their own name as a farm truck. In all others, ownership is the criterion.

The usual proof of ownership consists of the latest bill of sale of the vehicle and proof that the provincial sales tax has been paid. The following provision in the agreement between an owner-operator and the company employing him is hardly a bill of sale:

"The operator covenants and agrees with the company ... to transfer and set over and he does hereby transfer and set over to the company (the) truck owned or leased by him ... to the end, purpose and effect that the company may and shall be deemed the owner thereof for the purpose of placing and carrying insurance thereon and obtaining licences therefore for provincial, interprovincial and international freight transport..."

Proof of ownership, by the Company is in effect denied by the stipulation in such agreements that:

"...The Company shall not be responsible for, nor shall it be deemed to assume any lien, charge or encumbrance on, over or against said truck."

There is no question that the owner-operator is the beneficial owner of the truck. Yet, the truck is registered as a PSV or CT in the name of the company, and when the agreement between the company and the owner-operator is terminated, the company cancels the registration. Some agreements go so far as to stipulate that "... all licence plates provided hereunder for the operation of said truck are and shall remain the property of the company and shall be returned to the company by the operator on demand...". Clearly, such stipulations contravene Section 7(5) of the HTA which makes all number plates the property of the Crown.

It must be concluded that strict enforcement of the HTA would put an end to the employment of owner-operators by motor carriers, PSV and CT. Yet, the practice is so widespread, and has been for decades, that it is almost unthinkable to force motor carriers back into the position that they must own all the trucks they operate.

In the U.S. the important role played by owner-operators in highway transportation was recognized well before the so-called deregulation of 1980, and the IOC set rules for their employment and standards for contracts between owner-operators and carriers.

With the exception of B.C. and Quebec, regulating authorities in Canada have tended to ignore the conflicts between legislation and industry practices created by the employment of owner-operators, and the authorities have tended to rely on informal consensus with motor carriers on what is and what is not acceptable practice.

c) Definition of Commercial Truck

Enforcement problems also result from the peculiar definition of the commercial truck. The definition is supposed to conform to the concept of the private carrier who has an ownership interest in the cargo of the vehicle. However, ownership interest in the the cargo is not stated. The inferred criterion is that the carrier does not receive compensation for the activity. Since private carriage of any commodity still incurs a cost, sound economics and good business practice requires that the cost be covered in some way. The first problem with the definition is that no person operating a business in a sensible manner could adhere to it, nor avoid violating it. The second problem with the definition is that the enforcement officers must be able to detect that a charge has been levied, and find evidence that money has been paid. Such evidence cannot be obtained from documents the trucker must carry, but through an audit of waybills at the place of business.

Changing the definition to include the concept of ownership is a complicated question by itself, but will not eliminate the detection problem. In other jurisdictions, with the ownership requirements specified, the truckers enter into buy/sale agreements under which the trucker 'buys' the cargo from the consignor and 'sells' the cargo to the consignee at a higher price. The consignor, not the trucker, selects the consignee.

d) The 'Other' Truck Category

The 'other' truck category with T-plates includes trucks used in urban areas primarily and trucks used solely for the purpose of carrying exempt commodities.

By definition, private trucks used primarily in an urban centre can cross the city, town, or village limits and transport goods to or from destinations up to twenty kilometres (if the urban centre is Winnipeg) or thirty kilometres (all other urban centres). By law, a for-hire truck used primarily in an urban centre becomes a public service vehicle when it crosses the urban limits, but is exempted by the Motor Transport Board from requiring a certificate provided it does not transport goods beyond a twenty-four kilometre range, and only crosses the urban limits occasionally operating on an irregular route.

Private trucks with a T-plate that travel beyond the above limits, are defrauding the government of the extra fee required for a commercial truck licence or are withholding from a legitimate for-hire carrier, traffic which the law has deemed to be his. A for-hire truck violating the terms of the Board's exemption is contravening section 258 of the Act.

Detection of these illegal movements is problematic for several reasons. It involves surveillance of all roads leaving every urban centre in Manitoba. Even if one limited surveillance to the City of Winnipeg, where most intraprovincial traffic would originate or be destined for, at least 190 roads exist which would have to be watched. Although specific distances are mentioned in the Act, no road signs are placed on the roads radiating from communities identifying the boundaries.

Another problem in detection is that trucks carrying exempt commodities with no travel restrictions may also operate with T-plates. Enforcement officers cannot identify violators of these rules by observation, but would have to stop all such trucks and check waybills, etc.

e) Exempt Commodities

The specific exemptions are not always written in a clear and consistent fashion. Many exempt commodities are agricultural commodities, or products used on farms. Some products like grain cleaners, sugar beets, and straw, have no conditions attached. The other agricultural products are seemingly restricted to the movement from farm to market, but the terminology varies from commodity to commodity, e.g. 'primary movement', 'from farmers' premises', 'to farmers', 'farmers' grains'. Livestock is exempt in its movement to market if the farm and market is within fifteen miles of wherever the truck is registered, but no distance restriction is applied if the livestock is going to an exhibition. Petroleum products from local agencies to consumers are exempt within a fifteen mile radius of the place of business of the registered owner. It appears that both agency and consumer must be within the fifteen mile radius. Infractions of these distance conditions are obviously difficult to detect on a regular basis.

In one section of the regulations, 'intraprovincial and extraprovincial' is used for one commodity; in another section, 'intraprovincial' is used for another. It is not clear what applies for other commodities or uses. The vagueness of the language permits the Motor Transport Board to make its own interpretations. Changes in the composition of the Board may lead to changes in interpretations and new directives to the enforcement staff.

f) Operating Authorities

The Motor Transport Board has recognized the need to review existing operating authorities and clarify the terms used. It has also recognized the need to systematize its records of

these authorities in order to obtain a more complete overview of what has been authorized. Such a review and organization is essential for more effective enforcement.

The enforcement officers must check bills of lading and other documents against the operating vehicles to determine if a violation has occurred. Vague and unclear wording create uncertainty about the legality of the shipment. While the officers have the authority to detain a truck, they are understandably reluctant to do so when the illegality of the shipment is not clear.

Although within their discretion, such a decision will result in an argument with the trucker and a wrong decision will result in vigorous complaint from the carrier. The enforcement staff of the Traffic Inspection section frequently seek confirmation of their suspicions from the Motor Transport Board staff who prefer to leave the decisions to the head of the Traffic Inspection section.

Different terminology used in the operating authorities can confuse enforcement officers. One example is the use of the term 'heavy machinery' in the list of permitted commodities. This is vague enough to cover a wide range of commodities. The definition of geographic territories poses a problem. Frequently areas which can be served are described as a point and its surrounding 'district'. In other authorities, specific boundaries are indicated, often, highways. The use of vague geographic boundaries requires the enforcement officers to exercise discretion in their decisions. Describing geographic boundaries in general terms may be unavoidable, but enforcement officers should be given a consistent policy to follow in their interpretation, i.e. for leniency in passing vehicles where a

violation is not clearly observable or strictness in stopping vehicles where a violation may exist. Exact boundaries are more clear, but could require continual reference to a map. This is particularly true when the boundaries define an area outside the Province, e.g. 'Winnipeg to and from points in Ontario east of a line drawn north and south through Long Lac'.

Another example of confusing phrases that appears in many authorities is the expression 'from X to and from Y'. That this means from X to Y is clear. 'From X from Y' makes no sense. 'To X from Y' is not stated. Whether it is implied is unclear because other authorities do state 'to and from X to and from Y'.

The length and detail of many operating authorities is also troublesome for enforcement officers to check for violations. The enforcement officers do not have an updated catalogue of operating authorities as a reference. They must use the Manitoba Trucking Association's Directory which is not always accurate.

An updated catalogue of operating authorities and a commodity index identifying the products included in the authorities are necessary tools for the enforcement officers.

g) Farm Trucks

The difficulties in enforcing the legislation respecting the use of farm trucks spring from the definitions of 'farm truck' and 'farmer' in the HTA and from the manner in which the permitted use of farm trucks has been set out in the Act.

It may be recalled that the HTA defines a farm truck as a truck owned by a farmer, and defines a farmer as a person who owns, rents or leases land and who, in the opinion of the registrar, is engaged in the production of agricultural products for sale to a 'significant degree'. Although on the face of it the definition gives the registrar almost unlimited discretion to determine who is or is not a farmer, in practice the determination is made by the applicant for a farm truck registration by declaring that he is a farmer by reason of the fact that he owns, rents or leases land and that he engages in agricultural production for at least 3 months of the year. Neither the legislation nor the declaration requires that the applicant devote 3 months of the year exclusively to farming. Hence a person may have a full time job as a carpenter, civil servant or truck driver and may still register one or more trucks as farm trucks under the HTA. Also, there is no limit to the number of trucks a person may register as farm trucks.

A farm truck may be used to transport products of the owner's farm and commodities for use on his farm and to transport the farmer himself, members of his family and employees. A farm truck may also be used to transport products of a farm belonging to another farmer (except milk, eggs or livestock) and commodities for use on another farm as long as no compensation is paid or asked for the transportation. Finally a farm truck may be used for compensation to transport grain, oilseeds, sugar beets, vegetables or fruits from the farm where the crop was grown to an elevator, processing plant or market.

The loose definition of farmer together with the permitted uses of farm trucks create enforcement problems that are virtually insurmountable. Although an enforcement officer may have his

own view of who is and who is not a bonafide farmer, the HTA definition and the registration procedure are such as to make it pointless to challenge the registration of a farm truck. Since a farm truck may be used to transport anything to any farm as long as it is not done for compensation, the enforcement officer would have to provide proof that compensation was being paid in order to show that a farm truck was used in violation of the HTA if, for example, a farm truck carrying a load of fertilizer were stopped on a highway. It need hardly be emphasized that such proof is difficult to come by. Since the HTA places no geographic limit on the location of an elevator, processing plant or market to which farm crops may be transported for compensation by farm trucks, distance from home is also not a criterion that could be used to establish possible violation of the Act.

Subsections 6(26) to 6(29), which permit farmers to register leased trucks in their own name, have enabled one trucking company to lease equipment to an affiliated farm company which registers the units temporarily as farm trucks. The units are used to haul most of Manitoba's harvested sugar beets to the sugar refinery. When the work is completed the units are returned to the trucking company and are registered again as PSV. Because farm trucks are exempted from the Motive Fuel Tax Act, the province incurs a loss in fuel tax revenue, which the Department of Finance estimates at approximately \$70,000 per season.

The potential exists that other trucking companies will use the latitude provided by the Highway Traffic Act to become involved in the transportation of cereal grains and/or other farm products using F plates and tax-exempt fuel.

h) Working Conditions and Safety

Working conditions are an important issue in the trucking industry because they directly affect the well-being of thousands of drivers and their families, because they are a significant factor in the operating costs of the trucking companies, and because working conditions are a major factor in highway safety.

Manitoba's Employment Standards Act makes no special provisions for employees of trucking firms. Hence, the provisions of the legislation regarding hours of work, overtime pay, vacation pay, etc. apply to intraprovincial truck drivers as they would to other employees of firms which are under provincial jurisdiction. However, since all of Manitoba's larger trucking companies operate interprovincially as well as within the province, their drivers are subject to the Canada Labour Code rather than the provincial Employment Standards Act.

The Canada Labour Code itself does not deal with hours of work for truck drivers. This is covered in Motor Vehicle Operators' Hours of Service Regulations which are made under the Labour Code.

Because of several weaknesses in the Canada Motor Vehicle Operators Hours of Service Regulations they contribute little to highway safety.

One weakness is that the regulations apply only to motor vehicle operators in the service of extra-provincial for-hire carriers; the regulations do not apply to drivers in the service of private carriers. Those drivers are assumed to be employees of the private carrier and are, therefore, assumed to

be covered by labour legislation of the province in which the company is located. Unfortunately, provincial labour legislation is not concerned with highway safety and highway traffic legislation does not (anymore) place restrictions on hours of work. Since private trucking accounts for a substantial share of highway transportation, the regulations leave a big hole in coverage.

A second weakness is that the regulations allow for very long working days. Section 4 of the regulations provides that a motor vehicle operator must have had 8 consecutive hours off duty when he starts a workshift. Section 7 provides that the hours of service of a motor vehicle operator shall not exceed 10 hours of driving in any workshift, fifteen hours on duty in any workshift and 60 hours on duty during any period of 7 consecutive days. Section 14 provides that no motor vehicle operator shall drive a motor vehicle for more than 4 consecutive hours without a period of at least 10 minutes off duty, or 6 consecutive hours without at least a period of at least 30 minutes off duty. Compared with the norms of 7 hour shifts and 40 hour workweeks set by federal and provincial legislation for most other occupations these are extraordinarily long hours of work.

A third weakness is that exemptions from the limits set in Section 7 may be granted upon request by the motor carrier. Section 13 authorizes regional directors of the Department of Labour to issue permits to motor carriers extending the hours of service of motor vehicle operators to 15 hours of driving per workshift, 18 hours on duty per workshift, and 70 hours on duty in any period of 7 consecutive days. Such permits are routinely issued to extra-provincial carriers upon request.

A fourth weakness is that there is no on-the-road enforcement of the hours of service regulations. An amendment in April 1983, relieved motor vehicle operators from the obligation to make a daily log and to have in his possession duplicate copies of his daily log for the preceding 30 calendar days, which was required by Sections 19 and 20. The motor carrier company is still required to keep detailed daily records of all its drivers and tractor units including time of beginning the workshift, starting point, destination point, time elapsed etc. This enables inspectors of Labour Canada to audit the hours worked by drivers in the service of the company. However, on-the-road inspections for the purpose of ascertaining whether the driver is not exceeding the maximum hours of driving, and may thereby endanger the health and safety of himself and other highway users is not possible if the motor vehicle operator is not required to keep a continuous individual record of his working hours.

It may be noted that the Canada Hours of Service Regulations for motor vehicle operators are less stringent than the U.S. Federal Motor Carrier Safety Regulations, which in turn are less stringent than the regulations in the European Economic Community (EEC) and AETR (EEC plus Austria, Czechoslovakia, German Democratic Republic, Norway, Portugal, Spain, Sweden, USSR and Yugoslavia which belong to the European Agreement on International Road Transport).

Canadian and U.S. regulations are very similar. However, except for Alaska, the U.S. regulations do not allow for extending the hours of driving beyond the maximum of 10 hours per day and 60 hours per week. The U.S. regulations also require the keeping of daily logs by the vehicle operator.

In the EEC the driver must have been off duty for a period of not less than 11 consecutive hours before beginning a workshift (Canada 8), he may not drive more than 8 hours per day, 48 hours in any period of 7 consecutive days and 92 hours in any period of 14 consecutive days. The driver is required to take a break of at least 30 minutes after 4 consecutive hours of driving, and of 60 minutes if the truck is a semi-trailer or if it has a GWV of more than 20 tonnes. In the EEC all trucks used in international transport must be equipped with a tachograph (tachometer).

The AETR rules instead of the EEC rules apply to the whole of any journey to or from any non-EEC countries which are signatory to the AETR. The AETR rules are the same as the EEC rules with a few modifications: the maximum period of continuous driving may be increased from 4 to 4.5 hours to enable a journey to be conveniently broken or completed, the weekly rest period is 24 hours rather than 29 hours in the EEC, but in either case the rest period must be immediately preceded or followed by the 11 hour uninterrupted period off duty, and the AETR make the Individual Control Book (log book) mandatory even if the truck is equipped with a tachograph, and there is a daily distance limit for single drivers of 450 km.

It is evident that the Canada Motor Vehicle Operator Hours of Service are considerably less stringent than the rules in the U.S. and Europe. Moreover, there is no mechanism to enforce the rules except to audit company records after the fact.

The present Highway Traffic Act of Manitoba makes no provision for restricting the hours of driving although such provisions were made in the 1930's and 1940's.

An amendment to the Act assented to March 15, 1938 provided that the driver of a PSV vehicle or commercial truck "including the owner if he is the driver, shall not be on duty in driving more than 9 hours, nor in any capacity more than 12 hours in any 24 hour period, nor on duty more than 6 days per week. The Motor Carrier Board was given the authority to "regulate the hours of employment and the rate of wages of employees of motor carriers and fix the maximum hours of employment and minimum rates of wages of such employees". Further, Section 167(3)(G) provided that a certificate may be conditioned for "the payment of reasonable wages and observance of proper conditions of service in respect of the employees of the holder". In the 1941-42 session of the Legislature the distinction between "driving" and "being on duty" was removed, and the maximum hours to be on duty in any capacity were reduced to 10 hours in any 24 hour period.

When the Act was rewritten in 1966 all references to hours of work and labour standards were dropped. Legislation respecting employment standards in motor transport was thus far more stringent in the 1930's than it is in the 1980's.

In the absence of effective legislation the responsibility for maintaining reasonable hours of work and safe driving conditions falls on the drivers themselves and on the companies employing them. No doubt many companies take that responsibility seriously but there is always the danger that some do not. Moreover, the common practice of paying owner-operators on a per-mile basis is a built-in incentive to drive long hours. In the interest of the health and safety of the drivers and of other highway users it would seem desirable to improve the effectiveness of hours of service regulations.

i) Weights and Dimensions

The regulation of weights and dimensions governs the weights of loaded trucks, dimensions and axle configurations. Its primary purpose is to ensure that the size and weight of vehicles do not exceed the limits for which the highway system is designed. A secondary function of regulatory weights and dimensions is to try to make sure that vehicles or vehicle combinations do not represent a hazard to the driver or to other highway users.

A research program sponsored by the federal and provincial governments and by industry has been launched to find answers to questions concerning the stability and the drivers' control of articulated trucks, and concerning the impact of heavy vehicles on highway pavement. The research program is expected to be completed in three years. There appears to be consensus among governments and the industry that there should be no changes to the present regulations regarding weights and dimensions until the results of the research program are available.

j) Rate Setting

Section 264 of the Highway Traffic Act provides that a carrier may only charge rates in accordance with a tariff of tolls filed with and approved by the Motor Transport Board; that the Board may revise a tariff of tolls at any time, and that no tolls shall be charged except in accordance with the tariff as revised. Finally, when the Board establishes a standard tariff of tolls, that tariff shall be deemed to be the tariff filed by a motor carrier and approved by the Board.

It has been the practice of the Motor Transport Board to establish a standard tariff of tolls based on distance and weight. The standard tariff is periodically revised to reflect increases in costs, usually in response to representations by the Manitoba Trucking Association and/or the household good movers association. Thus, to operate within the law, all regulated carriers must charge the same rates based on weight and distance as set by the Board in its standard tariff of tolls.

In practice, the provisions of Section 264 of the HTA are widely ignored. Carriers and major shippers frequently negotiate rates other than those set in the standard tariff of tolls, without the carrier filing the agreed-upon rates for approval by the Board. Carriers and shippers defend the practice on the grounds that filing rates would disclose information to their competition. Of course, it would; but it is among the chief purposes of a regulated system to prevent discriminatory pricing, and to assure fair and equal treatment for all.

SECTION V

SUMMARY OF OPINIONS EXPRESSED AT PUBLIC MEETINGS

In the fall of 1983 the Task Force held a number of public meetings to receive comments on the discussion papers which had been published earlier in the year, and to give an opportunity to interested parties to make their views known on the regulations governing motor transport in the province. Meetings were held in Winnipeg on September 19 and 20, in Brandon on September 26, in Dauphin on October 12, in Thompson on October 20, in The Pas on October 21, in Winnipeg on October 26 and 27 and again in Winnipeg on December 12 and 13. Presentations were made by some 65 persons and organizations having an interest in highway transport. A brief summary of the comments and recommendations made on the major issues is presented in the following paragraphs.

A. Views on Economic Regulation

In the wake of deregulation in the U.S. and in accordance with the expressed preference of the federal and provincial governments in Canada to reduce the role of government in regulating the private sector, the most important issue before the task force is economic regulation per se. In other words, is there still a need for a government agency to decide who may and who may not provide trucking services in Manitoba?

It will be recalled (p. 34) that the principal objective of regulation was (and is) to assure the public of adequate, reliable transportation services at reasonable rates. This implies that there is or was a prevailing thought that if the provision of transportation services were left to the free play of market forces, services might be less adequate and reliable and/or perhaps more expensive than under regulation.

It may be noted that while the protection of the public is the principal objective of regulation from the government's point of view, others may be in favour of regulation for different reasons. Thus, regulated truckers may favour regulation because it restricts competition and thereby provides a degree of stability to their enterprise. Labour unions may prefer regulation for the same reason; greater stability in the industry may offer better prospects for job security, improved working conditions and wages than might be obtained under conditions of intense competition.

On the other hand, some firms may feel that government regulations restrict their freedom action, limit their potential for growth, or prevent them from running their business in the most efficient manner.

The discussion paper prepared by the task force outlined three possible options. Option 1 would reduce regulations to the minimum required to ensure safety and responsible behaviour in motor transport. Under this option, any person or company wishing to get into the for-hire trucking business would be free to do so provided his equipment met the standards set in legislation and provided he obtained the prescribed insurance and bonding. All businesses would be free to arrange their transportation services in the manner that would best meet their requirements. Option 2 would reserve a somewhat larger role for the regulating authority; for example, transportation to and from certain areas in the province might remain protected in order to ensure services. Option 3 would retain the regulated system as it has developed in Manitoba over the past 50 years, but would streamline the regulations so that they correspond to present day practices and so that they would be enforceable. The discussion paper contained suggestions how a number of issues could be dealt with under each of those options.

1. In Favour of Strict Regulations

Among those making presentations to the Task Force the following organizations and companies expressed a preference to retain a regulated system of motor transport while making recommendations for changes in the present system:

1. Canadian Brotherhood of Railway Transport and General Workers, (CBRT)
2. Canadian Industrial Traffic league (CITL) (a combination of Option 2 and Option 3)
3. Kleysen Transport
4. TransX, Mr. Tolaini
5. Carberry Transfer
6. Lorne Boguski, Mayor of Roblin
7. Prairie Freight Lines, Killarney (Bud Perkins)
8. Roblin Truck Services, Roblin (Mr. Kerschak)
9. Bicknell Transfer, Birtle
10. J.C. Ashcroft, Reeve, R.M. Birtle
11. Beaver Bus Lines (J. Fehr)
12. R.M. of Tache
13. John Veitch (PSV carrier, consultant)
14. Mr. Robert Gabos (Taylor, Brazzill, McCaffrey)
15. Winnipeg Chamber of Commerce
16. CN and CP Rail - Intermodal Services
17. Grey Goose Bus Lines (Bernard Thiessen)
18. Paul's Hauling
19. Manitoba Trucking Association (MTA)
20. MCF Ltd. (R. Harrison)

A wide divergence of opinion exists among the above companies and organizations on what changes ought to be brought about in the regulations.

The Manitoba Trucking Association recommends that only two types of operating certificates be issued, one for common carrier and one for private carriers. A private carrier should be allowed to haul own goods only (not for compensation) and a breach of that condition should result in the withdrawal of the operating certificate.

MTA also wants no extension of the list of exempt commodities, and suggests that the present list be critically examined to determine if any exempt commodities should be "declassified".

MTA recommends that there be no change in the public need and convenience test now in effect, and that all applications continue to be gazetted.

MTA is opposed to any preference for rural based carriers in the granting of operating authorities to allay concerns over the extent to which rural trucking services are corporately controlled from Winnipeg.

MTA recommends that "the concept of tacking of authorities through an unrestricted common meeting point be accepted either in legislation or by policy".

MTA also recommends that "the accepted system of the engagement of owner-operators by common carriers should be enshrined in legislation".

Finally, MTA recommends that the enforcement responsibilities of the Motor Transport Board, the Motor Vehicle Branch and the Highways Inspection Branch be brought under one roof, that all sectors involved in the truck transportation chain including shippers be held responsible for staying within the regulations, and that enforcement "become the cornerstone of regulation" and that sufficient funds be allotted to ensure that regulation is effective.

The Canadian Brotherhood of Railway Transport and General Workers (CBRT) is strongly in favour of a regulated system but is critical of what it considers abuses of the regulations. CBRT is principally concerned with the material and physical well-being of workers in the industry, e.g. wages, safety, health, hours of service. CBRT links working conditions to an inadequate labour code and to lax enforcement of existing motor transport regulations. With respect to the latter CBRT considers the employment of owner operators by regulated carriers as an abuse of their operating authorities, equivalent to franchising or subletting operating authorities granted by the Motor Transport Board. CBRT challenges the practice of leasing, reassigning or transferring operating authorities, and insists that the right to issue and reassign authorities belongs solely to the Board.

CBRT recommends that the present law be enforced by insisting that all PSV and CT authorities be operated with company owned trucks.

CBRT further recommends that CT plates be discontinued and that all interurban transportation be turned over to for-hire carriers. Similarly, drey licences in the City of Winnipeg should be placed under the authority of the MTB as PSV carriers.

CITL is in favour of a regulated system because rapid deregulation (such as occurred in the U.S.) might create chaotic conditions and could be particularly hard on less-than-truckload (LTL) shippers. Shippers' major concerns are that carriers provide efficient and reliable service and act responsibly. In that context CITL is in favour of regulations providing for stricter requirements respecting claim settlements, insurance and fidelity bonds. CITL also suggested that consideration be given to bring freight forwarders and break bulk operators under some form of regulation.

Kleyesen Transport is in favour of regulation but would like to see greatly simplified procedures in the handling of applications for operating authorities. It is not necessary to advertise all applications for operating authority; advertising invites opposition, and opposition lawyers can delay and filibuster the hearings and intimidate supporting witnesses. The process is particularly difficult for small carriers. Kleyesen Transport also is of the opinion that the tacking of authorities should be allowed, that the Board should establish a standard procedure for dealing with tacking and above all that there should be more fairness to small and medium sized companies in granting tacking authorities.

Carberry Transfer's views of the regulated system are very similar to those expressed by Kleyesen Transport. Simplification of Board procedures, clear wording of operating authorities, the right to tack or self-interline and an end to the badgering of supporting witnesses by opposition lawyers are the major concerns.

Other rural carriers making presentations to the task force in favour of a regulated system included Pembina Hills Transfer, Prairie Freight Lines, Roblin Truck Services, Bicknell Transfer, and J. Veitch. Three of these had concerns over Board procedures, and particularly over the cross-examination of supporting witnesses by opposition lawyers. The perception is that the process favours the big established companies who have the financial resources and who employ the specialized law firms.

The mayor of Roblin and the reeves of the R.M. of Birtle and the R.M. of Taché expressed support for the regulated system because in their view it was the best way to protect the rural based carriers who provide reliable services to their communities. This view was also supported by the Russell Chamber of Commerce.

Representatives of the bus companies support the regulated system especially as it applies to passenger services. The bus companies recommend that regulation of passenger services be distinguished from truck services in the HTA.

TransX and Paul's Hauling were two firms which made presentations strongly in support of the regulated system.

The intermodal divisions of CN and CP Rail are in favour of a regulated system provided that the regulations are enforceable and enforced.

2. In Favour of Relaxed Regulations

Persons and organizations indicating to favour less stringent regulation included:

Associated Beer Distributors (ABD) (either Option 1 or Option 2)

Independent Truckers Association of Canada (ITAC)

Canadian Industrial Traffic League (either Option 2 or Option 3)

Cargill Ltd.

North Western Express (implicit)

Parkland Regional Development Corp. (Parkland RDC) Norman

Regional Development Corp. (NORMAN RDC), Thompson

Thompson Industrial Commission (implicit)

Purolator Courier (implicit)

H & H Carriers, Lac Du Bonnet

Gaulco - R. Newberry, P. Armstrong (designated commodity haulers)

Some of the above are in favour of a regulated system as long as their particular concerns can be accommodated; among them would be ITAC, CITL and Gaulco. Others lean towards deregulation but do not object to a regulated system as long as their concerns and aspirations can be accommodated within it; among them would be ABD, Cargill, Northwestern Express, Purolator and H & H Carriers.

Parkland RDC is of the opinion that a lack of commercial interaction between communities in the region is partly due to deficiencies in the transportation system. The existing "hub-and-spoke" system wherein a carrier provides general freight services between Winnipeg and his district discourages

the flow of goods between rural communities. Thus a parcel of freight from one rural district to another rural district is likely to be carried to Winnipeg by one trucker and out to the destination by another carrier. Because of the time and cost involved in shipping merchandise through Winnipeg trade between rural communities is discouraged. Therefore, Parkland RDC would like to see changes in the regulated system to allow for more scope in transportation within the region.

Norman RDC is of the opinion that the provision of motor carrier service to smaller communities in the north requires the continuation of regulation. Some communities in the north lack the size and economic consequence to obtain motor carrier service in the open market, according to Norman RDC. In general, Norman RDC would like to see no more regulation than is needed to accomplish the objectives. Thus, Norman RDC supports the right of shippers as well as trucking companies to employ owner-operators and favours the removal of all restrictions on the transportation of bulk commodities.

The Thompson Industrial Commission adopts a similar position.

3. In Favour of Minimum Regulations

Persons and organizations in favour of a minimum amount of government regulations of motor transport are:

Associated Beer Distributors (Option 1 or 2)

Loewen Millwork, Steinbach

Dyck's Transfer and Forwarding, Brandon

Mining Association of Manitoba (MAM)

Hudson Bay Mining and Smelting Co. (HBMS)

Manitoba Forestry Resources Ltd. (MANFOR)

Flin Flon Chamber of Commerce
Primco Western - Canadian National Building Materials
Distribution Association
Mandak Metal Processors, Selkirk

Most of the above companies are engaged in manufacturing or distribution. They are of the opinion that transport regulations restrict their freedom of action and raise their costs of doing business.

Loewen Millwork is of the opinion that transport regulation is "contrary to the spirit of free enterprise". "The window industry is not regulated, why is the transportation industry?" asks Loewen Millwork. Current regulations prevent the company which distributes its products across western Canada from taking on backhauls; as a result the company's trucks accumulate many empty miles, thus raising the company's costs.

Primco Western, a member of the Canadian National Building Materials Association is also a private carrier and, like other private carriers, is supposed to provide its transportation services without compensation. Primco is of the opinion that the present regulation is unworkable. Obviously, transportation involves a cost; the company recoups the cost by selling its goods FOB the client's place of business. Primco does not think it feasible to leave the transportation of its goods to common carriers. Primco cited the following reasons for looking after its own transportation:

- Retailers demand that wholesalers provide comprehensive delivery service; in the building materials industry transportation is part of a service package that also includes advertising and marketing.

- The goods must be delivered at the lowest possible cost.
- Cost savings can be made by consolidating deliveries on routes (e.g. Winkler, Pilot Mound, Carman).
- Rural retailers sometimes consolidate their purchases, partly to collectively save on freight.
- The company has specialized equipment to handle certain items, which common carriers do not have.
- The truck driver also acts as a salesman.
- Many markets could not be penetrated were it not for consolidated truck services.

Primco is of the opinion that enforcing the present legislation - ie. that no compensation may be paid for transportation by commercial truck - would harm not only the distributors but also the rural retailers.

Primco favours deregulation of the Motor Transport industry.

Mandak Metal Processors of Selkirk reprocesses scrap metal which is gathered all over the province by hundreds of independent operators. According to Mandak the transportation industry is over-regulated and the regulations are having a serious effect on their business. The regulations curb the right to be in the transportation business, and because Mandak depends on the transportation of scrap metal, the regulations interfere with Mandak's business.

Mandak gave several examples of poor service by authorized carriers. Most authorized carriers do not have the equipment to load and haul scrap metal, and they have shown little interest in providing quick and reliable service. At the same time there are many owner-operators who are willing and able to haul but who are not allowed to. In the opinion of Mandak the regulations have placed a surcharge on the user of transportation services, and they work against the public interest.

The Mining Association of Manitoba, the Hudson Bay Mining and Smelting Company and Manitoba Forestry Resources Ltd. are in favour of free enterprise with a minimum of regulation. They recommend that there should be only two requirements to enter the transportation business: a business licence requiring proof of financial accountability, and the driver should have completed a course in the safe handling of the commodity(ies) he expects to transport. They also recommend that all trucks other than recreational trucks be classed as PSV, thus eliminating the distinction between the various classes of trucks and carriers. This would provide for free and fair competition. With respect to service to rural communities, MAM and the member companies think that the regulations tie the hands of the rural carriers and that the regulations are detrimental rather than helpful to the rural communities and the rural carriers.

Dyck's Transfer and Forwarding is a cartage company in the City of Brandon. The proprietor, Mr. Dyck, is of the opinion that the regulated system does nothing to encourage initiative or innovation on the part of the companies with operating authority. Rather, the lack of competition permits licensed carriers to behave irresponsibly. Mr. Dyck is especially

critical of unsanitary conditions which occur in rural transportation: Perishable food products in unrefrigerated vans, time-sensitive traffic taking up to three days to reach Brandon from Winnipeg, food products shipped together with herbicides and pesticides in the same van, and inadequate cleaning of trucks after shipping livestock. Rather than concerning itself with restricting competition in trucking, government regulations should set standards to ensure safety and responsible behaviour.

Purolator Courier Ltd. considers it essential that the legislation be overhauled. Current regulations limit the flexibility of Purolator to serve the public. Ultimately, the democracy of the market place rather than regulation should determine who will or will not operate trucking services. Regulation should protect fair trade and equitable competition but not individual carriers. The present test of public need and convenience favours existing carriers; the onus ought to be on the opponent of the application to prove injury to the public if the application were granted.

B. Views on Classification and Registration (Taxation) of Trucks

The most drastic change in the classification of trucks was proposed by the Manitoba Mining Association, Hudson Bay Mining and Smelting Co. and Manfor who advocate that all trucks except recreational trucks be classed as PSV, so that there would be only one classification.

Elimination of the CT classification is recommended by CBRT and Carberry Transfer, who advocate that all freight moving beyond urban areas be carried by PSV operators.

CITL recommends the elimination of T plates so that there would be three classifications of trucks.

- PSV: for-hire carriers including local carters or dray operators (also advocated by CBRT)
- CT: all (commercial) private trucks including local transport as well as long haul
- F: for use in the owner's farm operation only.

Beaver Bus Lines, Grey Goose Bus Lines and Grey Hound Bus Lines recommend that a separate registration category be established for buses, so that possible changes in PSV trucking regulations would not inadvertently affect the regulatory framework of bus transport.

The following are of the opinion that F-plated trucks (trucks registered as farm trucks) should not be permitted to be used in for-hire transportation: CBRT, CITL, Pembina Hills Transfer, Kleyesen Transfer, TransX, Dyck's Transfer, Roblin Truck Services, J. Veitch, Paul's Hauling and Manitoba Trucking Association.

The Reeve of the Local Government District of Consol thinks that farmers should be allowed to haul crops in F-plated trucks on a for-hire basis. A similar position is taken by the Manitoba Sugar Beet Growers Association and the Manitoba Farm Bureau.

The Reeve of the Rural Municipality of Taché recommends that the F plate be retained for bona fide farm use. Mr. Bill Strath, Vice President of Manitoba Pool Elevators, speaking on his own behalf also prefers the F plate to be retained but thinks that farm trucks should not be used in for-hire transportation.

The Reeve of the R.M. of Franklin thinks that the use of F plated trucks to haul grain for compensation should be permitted, but that only bona fide farmers should be entitled to get F plates. Bona fide farmers are those who receive at least 51% of their net income from farming.

Mandak Metal Processors is opposed to discrimination in the use of T plates; particularly to the fact that a PSV or CT registration is required to haul scrap metal while many other bulk commodities (eg. sand and gravel) may be hauled on T plated trucks. The difference in registration fees is substantial.

Mr. John Veitch pointed out that even more important than the differences in registration fees are the differences in Manitoba Public Insurance Corporation (MPIC) insurance rates for trucks registered as PSV, CT, or T. The differences create inequities particularly for the small rural PSV carriers.

CN and CP Rail recommend that truck registration fees should reflect both the weight and the distance traveled. The railway companies are of the opinion that trucks do not pay their share of highway costs.

C. Leasing

Mr. Roy Rempel of Bronco Truck Rentals who also spoke on behalf of other truck rental companies brought to the attention of the Task Force several inaccuracies in the discussion paper "Problems, Issues and Options". The inaccuracies he referred to are the following:

- The omission of the category of U drives in the classification of trucks;

- The report's statement that PSV and CT trucks pay the highest registration fees. In fact, U drive registration and insurance fees are considerably higher than those for any other category;
- The inclusion under the heading "leasing" of owner-operators and other pseudo-leasing arrangements, and the report's reference to them that "... it would appear that all leasing arrangements in the trucking industry are of dubious legality".

The Task Force regrets any inaccuracies that may have occurred. The Task Force agrees that a much clearer distinction ought to have been made between the legitimate enterprises of the truck rental companies and the pseudo-lease arrangements practised in the industry and described in the report.

With regard to the classification of trucks, the U drives are included in the CT category. The registration fees for U drives are the same as those for PSV and CT trucks, but the insurance premiums for U drives are considerably higher than those for PSV and CT trucks.

In his submission, Mr. Rempel indicated that the truck rental industry saw little merit in the suggestion that all leasing arrangements should require the approval of the Motor Transport Board.

Mr. Rempel also stated that at present, the truck rental companies do not provide driver leasing services in Manitoba as is done in some other provinces but that the companies would wish to have that issue considered.

CBRT challenges the practices of leasing, re-assigning and transferring of operating authorities. However, this refers more properly to the pseudo-leasing arrangements rather than to truck rentals; one would expect, however, that CBRT would be strongly opposed to any scheme involving the leasing of driver services.

The MTA in its submission lists 10 different types of lease arrangements used in the trucking industry. All of them are variations on arrangements with owner-operators, and they are, therefore, not straight leases. MTA has made no comments on the latter or on the role of truck rental companies. MTA seems inclined to agree with the suggestion that leasing contracts should require the approval of the MTB, but the association doubts that the board is equipped to handle the workload that might be entailed. It is reasonable to expect that MTA would be opposed to having truck rental companies also provide driver leasing services.

CN and CP Rail are of the opinion that regulations should stipulate what may and what may not be permitted in lease agreements. They recommend that all firms engaged in the leasing of highway transportation equipment and/or personnel be made subject to the authority of the MTB, and that all leasing contracts require the approval of the Board.

The Thompson Industrial Commission suggests that the methods of approving leases be examined and that regulations be updated to reflect reality.

The Mining Association of Manitoba points out that when there is free entry in the trucking industry leasing arrangements present no problem. The key element of control is the business licence.

D. Owner-Operators

Common carriers, private truckers and owner-operators themselves are the parties that have a direct interest in the status of owner-operators in the trucking industry. Labour unions have an interest in their status, since owner-operators may be used to replace unionized employees, and the bargaining power of owner-operators (or the lack of same) may affect the bargaining strength of the labour union. Finally, it is of crucial importance to clarify the status of owner-operator in order to draft legislation that is enforceable.

For those who are in favour of deregulation (Option 1) the question would be resolved by the elimination of entry controls. Any person would be entitled to register his truck as a PSV, and owner-operators would be free to decide whether to contract their services to for-hire trucking companies, to other businesses or to go into the trucking business on their own. The firms listed in Section A as favouring Option 1 may be considered to support this solution.

There are others who, while generally supporting a regulated system, would like to see that room be made in the regulations for the role of owner-operators. Northwestern Express and H & H carriers are two trucking companies that are of the opinion that owner-operators should have the opportunity to move into business on their own. Carberry Transfer thinks that owner-operators should have the right to register their truck in their own name and have their own PSV plate, but that they should be restricted to work for for-hire carriers only. R.K.F., Gaulco and Kleyesen Transport find that the existing arrangements are satisfactory and that there is no need for change. The MTA recommends that "... the accepted system of owner-operators by common carriers should be enshrined in legislation", but is opposed to the employment of owner-operators by private carriers.

Cargill Ltd. demands for itself and for other private carriers the right to employ owner-operators. Cargill Ltd. suggests that "... there is an inalienable right for a company to transport its own goods ..." and "... that a company can contract with the vehicle supplier and the driver on whatever basis is legitimate according to the labour laws".

The Independent Truckers Association of Canada (ITAC) thinks that owner-operators should be able to register their trucks in their own name and should be free to act as contract carriers for for-hire trucking companies and for private truckers. Also, ITAC suggests that after a qualifying period (eg. two years) and a fitness test owner-operators should be able to go into business on their own or join a "trucking cooperative". ITAC further suggests that there should be standardized contracts between owner-operators and the companies employing them, and that the legislation should spell out the areas to be covered, including a requirement that companies give adequate accounting to their owner-operators.

That there be standardized contracts between owner-operators and the employing companies is also implicit in the suggestions made by Mr. John Veitch who among others suggested that revenue-sharing contracts be not allowed.

Norman RDC is of the opinion that more room must be given to owner-operators to operate on their own account, eg. the right to haul bulk commodities and to engage in regional trucking services.

CTTL is of the opinion that trucking companies must be held responsible for their owner-operators as they are for their employees.

CN and CP Rail recommend that owner-operators be treated as full benefit employees.

CBRT wants to put an end to the practice of employing owner-operators altogether. CBRT recommends that the existing law be enforced and that all companies, for-hire carriers as well as private truckers be required to operate with their own trucks and their own employees.

E. Working Conditions and Safety

CBRT considers the excessive hours of driving and the long periods that truck drivers are away from home as the most serious problems in the industry. The excessive hours of driving affect the safety of the driver and of the general public, while the long periods away from home have a detrimental affect on family life. As an example CBRT cites from the log of one of its members who in a calendar year was 5,500 hours away from home and drove 322,000 km. His gross earnings were \$36,159 or \$6.57 per hour away from home. CBRT is strongly opposed to the routine granting of extensions to the hours of work by Labour Canada.

CBRT recommends:

- a) that the federal government be called upon to cancel all permits extending the hours of work;
- b) that all trucks used in long distance transportation be equipped with tachometers under government seal;
- c) that provincial weigh scales staff help to enforce hours-of-work regulations, and to inspect tachometers;
- d) that violations of hours of work regulations be punished with heavy fines and with the grounding of the tractor unit for a period of two months;
- e) that the federal Ministers of Labour and of Transport be called upon to introduce one-year log books with the individual operator's social insurance number on the said document;

- f) that the federal Minister of Labour introduce regulations to reduce the hours of work in the highway trucking industry;
- g) that hours of work regulations must provide for down-time of at least 2 days in any 7 day period.

ITAC is also in favour of mandatory tachometers and log books in highway trucking, and strict adherence to speed limits. ITAC is also of the opinion that truck trains are hazardous.

CITL is of the opinion that drivers who go long distance on impossible schedules must be disciplined for reasons of public safety if not for their own. Hours of work regulations must be enforced.

CN and CP Rail fully support the suggestions made in the Issues and Options discussion paper:

- that an appropriate national hours-of-work regulation be instituted, and an effective Canada-wide system of enforcing the regulation be put in place;
- to make drivers' licences, operating authorities, and/or CAVR registration conditional on obeying the hours-of-work regulation;
- to make the keeping of log books mandatory and where feasible to use other auditable log systems as well.

Kleysen Transport is convinced that there must be restrictions on the hours of driving but is conscious of the difficulties involved in enforcing them. Perhaps spot checks and heavy fines for violations may help in deterring excessive hours of driving.

TransX agrees that hours of driving affect the safety of the driver and the public and favours the use of log books.

H & H Carriers also favour limits on hours of driving and the use of log books as in the United States.

Gaulco agrees with the limits on hours of driving in place in the U.S. but does not think that the MTB ought to be involved in this issue. It should be left to some other agency.

Paul's Hauling thinks that hours of work regulation should be left to the Canada Labour Code.

MTA make no recommendations on working conditions; their brief implies that working conditions should be left to the Canada Labour Code.

Dyck's Transfer emphasises the need for equipment safety checks, mandatory driver training and medical exams, and specific equipment requirements for the transportation of dangerous goods.

Al's Towing of Winnipeg thinks that safety controls are often inadequate, and that regulations are sometimes applied unintelligently.

The Mining Association of Manitoba, HEMS, Manfor, the Flin Flon Chamber of Commerce and the Thompson Industrial Commission urge that there must be flexibility in hours of work regulations; perhaps these should be a weekly limit. The Thompson Industrial Commission suggested a weekly limit of 50 or 60 hours.

Norman RDC is of the opinion that excessive hours of driving cause fatigue and are thus a danger on the highway. However, the RDC sees difficulties in enforcement. Perhaps raising the minimum levels of insurance and a statute of liabilities providing for onus of disproof could be considered.

Parkland RDC urges enforcement of strict safety standards for dangerous goods.

The Mayor of The Pas urges safety inspections for trucks.

F. Weights and Dimensions

Companies and organizations in the north of Manitoba, eg. the Mining Association of Manitoba, Norman RDC, Thompson Industrial Commission, HEMS, Manfor, Flin Flon Chamber of Commerce, and the Mayor of The Pas feel most strongly that the present weight limits should not be reduced, and that they could be raised in the winter months.

MTA makes no specific recommendation but its submission indicates that the organization would be opposed to lowering the weight limits.

ITAC is of the opinion that the present weight limits are high enough and that truck trains can be hazardous.

CN and CP Rail intermodal divisions are of the opinion that the present limits are high enough and need not be raised; proliferation of trailer dimensions causes difficulties in matching railway flat cars to the various trailer lengths, thus increasing costs; provincial and federal jurisdictions must make concerted efforts to standardize trailer dimensions; CN and CP are also of the opinion that trucks are not paying a sufficient share of the highway costs, and that truck user charges - preferably through a combined weight and distance tax - be increased 3 or 4 fold. This might increase total trucking costs by about 10%.

Some truckers appear to be more concerned with what they perceive to be uneven or unfair application of the regulations than with the limits as such.

Al's Towing has at times been the victim of jurisdictional disputes between inspectors of the City of Winnipeg and of the Province.

Al's Towing and Bicknell Transfer object to the provision in Section 62(2) of the HTA which exempts farm implements from the restrictions on height and width if the implement is moved by a farmer or is being delivered by a dealer to a farm. A PSV carrier must obtain an over-dimensional permit to haul the same implement. They feel that the law should apply equally to all. Al's Towing also thinks that some of the regulations in dimensions are not too well thought out and tend to reduce safety rather than enhance it.

Carberry Transfer and Bicknell Transfer think that the Province should install weigh scales in the western part of the province (possibly jointly with Saskatchewan) and staff them around the clock. Roblin Truck Services, Bicknell Transfer and J. Veitch are of the opinion that many farmers overload their vehicles, avoid weigh scales, and if caught, are given a warning, while regular truckers receive heavy fines.

G. Standards

CITL is of the opinion that the conditions of carriage as set out on the bill of lading are weighted in favour of the carrier. CITL advocates a "shippers' bill of rights" that would set out the minimum service standards to be met by the carrier. CITL also advocates stricter requirements respecting claims settlement. Although Manitoba's prescribed compensation for loss or damage of \$2 per pound is ahead of that in other provinces there is still much room for improvement. CITL also favours that freight forwarders and bulk break operators who are presently unregulated be brought under the authority of the MTB.

Dyck's Transfer of Brandon recommends that the Province (the MTB) enforce sanitary standards for the transportation of food products (eg. perishables to be transported in refrigerated trucks), recommends equipment safety checks, mandatory driver proficiency tests, mandatory medical examinations, specific equipment design standards for the transportation of hazardous goods and financial responsibility regulation to ensure that the carrier has in place the proper fidelity and liability insurance.

Parkland RDC also recommends that the MTB enforce tight sanitary standards on food shipments, that there be tighter enforcement of a packaging code for the shipment of furniture and appliances, and that claims settlement procedures be improved.

The Mining Association of Manitoba sees no problems with the existing contracts of carriage and favours flexibility in the terms of the bill of lading, eg. higher compensation (and hence higher and more costly insurance) for higher valued goods than for lower valued goods.

H. Tacking and Interlining

Kleyesen Transport and Carberry Transfer are of the opinion that the MTB should be more flexible on the issue of tacking of authorities (or self-interlining) and above all that companies should be treated equally. Small and medium sized companies must have the same rights and should be treated the same as large ones which, it is argued, have become large by means of tacking authorities. The perception is that the MTB now has become stricter and less flexible in considering applications for tacking or self-interlining.

The two companies also recommend that the MTB simplify and clarify the wording of operating authorities.

The MTA recommends that "the concept of the tacking of authorities through an unrestricted common meeting point be accepted either in legislation or by policy".

Parkland RDC is of the opinion that there is need for improved trucking services to and from Regina, Saskatchewan. This is important for the service of farm machinery and parts, tires and automobile dealers.

I. Designated Commodities

Carberry Transfer thinks that Manitoba should have the same list of "designated commodities" as the IOC designated commodities in the U.S. This position is supported by H & H Carriers. Alternatively, H & H Carriers suggests that all agricultural and food products could be declared designated commodities.

Paul's Hauling is opposed to extending the list of exempt and designated commodities.

MTA recommends that:

"the designated and exempt commodity classification will not be extended to include additional commodities originating in Manitoba and to ensure no further erosion of common carriers' freight these commodities should be critically examined to determine if any should be declassified. Those carriers now hauling such commodities should receive specific authority (grand-fathered) to continue hauling them".

SECTION VI

RECOMMENDATIONS

A. Overview

The discussion in the preceding sections has revealed that there are many problems with the regulations that govern motor transport in the province. The need for reform is obvious. In formulating its recommendations for reform the Task Force has kept in mind the provincial objectives of motor transport regulation and the need to keep the provincial regulations compatible with the extra-provincial regulatory system, which also is in the process of change.

The basic purpose of regulation is to achieve results that might not be obtained without it. In transportation, the basic purpose of regulation is to assure that communities have access to adequate and reliable transportation at reasonable rates. The basic purpose will be best served by regulations which allow for effective and fair competition and which seek to prevent market domination as well as excessive fragmentation and overcapacity. The regulations must be understandable and relate as clearly as possible to the objectives being sought; they must also be enforceable in a reasonably efficient and effective manner; both these objectives require a degree of simplicity. The process of applying for and receiving decisions on operating authorities must not be legalistic, cumbersome, and costly and must be fair. Finally, Manitoba regulations must be compatible with those in other jurisdictions.

To translate these objectives into practical recommendations the Task Force has tried to adhere as closely as possible to the principles of fairness, consistency and orderly transition.

The Task Force is conscious of the fact that different objectives may conflict at some point, that the rigid application of a few principles creates its own problems, and that exceptions may be necessary. However, the Task Force considers it important that the purposes of the rules as well as the reasons for the exceptions be as clear as possible. To a considerable extent the problems with the present regulatory system stem from the fact that the purposes of certain rules and of certain exceptions in the HTA are obscure.

In the opinion of the Task Force the structure of the trucking industry and the ways in which it operates are not in conformity with the regulatory framework that was designed 50 years ago. The basic choice the Task Force had to face was, therefore, to recommend changes in the HTA which would facilitate a more effective enforcement of Part VIII and a return to a more stringently controlled industry, or to recommend changes which would move the industry towards a less regulated environment with increased scope for competition and less reliance on controls.

Of the presentations made to the Task Force in favour of a strictly regulated industry the one made by CBRT recommending that all PSV carriers as well as private truckers be required to operate with company owned trucks and employee drivers was, in the opinion of the Task Force, the only one that was logically consistent and in conformity with the intent of the present HTA. It would also be enforceable on companies located in Manitoba and operating only within the province. However, the truck-ownership provision would not be enforceable on companies engaged in extra provincial trucking because they have the privilege of registering their trucks in another province. Since most of the big trucking companies operate across provincial boundaries the solution suggested by CBRT would, therefore, have only a very limited effect.

To generalize the MTA recommendations, they appear to advocate greater flexibility for the existing trucking companies, stricter controls on private truckers, and maintenance of current entry restrictions.

The Task Force does not think that the MTA recommendation on owner-operators is acceptable because it would be tantamount to the government's abdicating its responsibility for the registration of PSV trucks in favour of the existing common carriers; it is even more difficult to see how such legislation, if it were enacted, could make identical arrangements between owner-operators and other businesses illegal.

The question of the place of owner-operators is but one illustration of how the transportation industry is changing and how it has outgrown the regulatory framework. In the opinion of the Task Force, it is neither practical nor desirable to turn back the clock and to try to force the industry back into the confines of the present legislation.

However, the Task Force does not advocate the other extreme of abolishing all regulation of the trucking industry. Such an abrupt change would likely cause too much disruption and dislocation. A sudden change from a regulated environment to a competitive free-for-all might well jeopardize the provision of uninterrupted reliable transportation services, which is the central purpose of governmental regulation.

Having rejected a return to a more strictly controlled system as well as the abolition of all controls the Task Force recommends regulations to create an environment that is more open to newcomers, greater scope for rural-based carriers with limited operating authorities, recognition of owner-operators and room for fair competition.

In order to make the reformed regulatory system enforceable a number of amendments to the HTA will be required.

One set of amendments involves the definition of the various categories of trucks. Basically, the Task Force recommends that T plated trucks be restricted to urban use only, and that the present radius of 30 km (20 km in the case of Winnipeg) be dropped. The use of T plates in the for-hire transportation of so-called exempt commodities would also be discontinued.

All trucks used in for-hire transportation (other than local use) will be required to have PSV plates as is actually required by Section 2(42) of the present HTA. The so-called exemption seems to have been derived (incorrectly in the view of the Task Force) from the provision in the definition of commercial truck [Section 2(6)(v)] that a truck which "the board ... certifies in any year is not to be regulated ..." is not a commercial truck. The definition of commercial truck needs to be amended to make it conform to the concept of private trucking. Finally, the present definition for farm truck and its authorized use are clearly unsatisfactory and invite abuse. The Task Force recommends that Section 169.1(5) which permits the use of farm trucks in for-hire transportation be repealed.

Amendments to Part VIII of the HTA are required to deal with the issues of entry control and rate regulation. Although the MTB has considerable leeway in the granting of operating authorities, Section 263(2) appears to place upon the applicant the burden to prove that public convenience will be promoted by the granting of an operating authority. The Task Force recommends that the legislation place upon the opponent of an application the burden of proof that public convenience will not be promoted if an operating authority is granted. The Task Force further recommends that

Section 264 of the HTA be amended to permit the MTR to set maximum tariffs of tolls, and to give the board authority to permit motor carriers to negotiate tariffs below the maximum.

Most of the other recommendations contained in this report do not require changes in legislation.

The Task Force believes that its recommendations are compatible with and move in the direction of a regulatory environment similar to the reforms underway in the Province of Ontario. The Ontario Public Commercial Vehicles Act Review Committee's recommendations (which have been accepted by the government and which are in the implementation stage) are that the structure of licences should be simplified, that the entry test "be revamped, changing the focus and burden of proof" and that a more systematic approach be taken to performance regulation.

A licence rewrite committee has been appointed which will rewrite all operating authorities.

In Ontario Public Commercial Vehicle (PCV) licenses (PSV in Manitoba) will be required for all trucks hauling for compensation, the only exceptions being:

- private carriage
- cartage operations lying completely within a 'lower tier' or urban municipality
- operation of farm plated straight trucks
- transportation of fresh fruits and vegetables grown in the US.

To regulate performance or to enforce compliance the PCV Review Committee recommends the establishment of a system of Commercial Vehicle Operator Registration (CVOR). The report gives the following description of the system:

2.1.2/Commercial Vehicle Operator Registration (CVOR)

We are convinced that the new Act will mean nothing and achieve no improvements, unless it is properly enforced. The CVOR (Commercial Vehicle Operator Registration) appears to be the appropriate instrument by which to achieve enforcement. All other recommendations are contingent on the success of CVOR, or of any alternative method or device to achieve the same thing.

The CVOR as recommended by both the PCV Review Committee and the Uffen Commission on Truck Safety is intended to tie together carrier responsibilities for safety and the performance of statutory duties with respect to the vehicle, load and driver. We anticipate that the government will proceed with the development of CVOR as recommended by the Uffen Commission, and that it will be possible to implement CVOR when new PCV legislation is introduced (See Section 3.2).

Under this system, the Highway Traffic Act would require any individual, partnership or corporation who owns, leases or otherwise acquires or arranges for his own use a commercial motor vehicle for the purpose of transporting goods, to obtain a Commercial Vehicle Operator Registration.

This requirement would apply to all trucks, private or for-hire, travelling into, out of, or through the province, regardless of domicile.

The CVOR will help distinguish legitimate private operators from illegal private operators (eg. private operators hauling for compensation illegally). It will, for example, simplify multi-level leasing situations for enforcement purposes.

Only the beneficial owner of a vehicle will be able to register the vehicle, and such registration should only be in the name of the beneficial owner. The CVOR registrant will be responsible for paying the insurance requirements. When in use, the CVOR should

impose upon its holder full legal liability for the vehicle, the driver, and the cargo, and the liability will not be transferable except as incidental to the legitimate transfer of freight.

An Operator (or carrier) is defined as the person or business assuming liability for the conduct of the business operation and its drivers and vehicles. It does not refer to the ownership of the vehicles or the employment of the drivers. Operator registration would be unique to each operator, and could not be transferred.

Certain adjustments to the concept will be required to accommodate the owner operator. It is the Committee's intent that the owner operator be able to lease himself and his vehicle exclusively to any CVOR holder (for-hire or private), without having to transfer ownership of the vehicle.

The carrier operating record (CVOR file) would be used as an instrument of performance regulation. Any operators seeking competitive advantage through non-compliance with the PCV Act, Highway Traffic Act, the Labour Code, Dangerous Goods Code, or other legislation would risk his motor vehicle operating privileges.

The sweeping changes in Ontario regulations will affect the following categories of Manitoba truckers (under our present regulations):

1. PSV trucks with extra-provincial authority;
2. CT trucks with extra-provincial authority, or those operating into Ontario without specific authority;
3. F and T plated trucks carrying exempt commodities (ie. farm and forest products).

Although it is not explicitly stated it is reasonable to expect that in order to obtain a CVOR in Ontario, out-of-province trucks

would have to meet the same licensing requirements as are applied to Ontario trucks. In other words, it would not seem reasonable to expect that a Manitoba F plated or T plated truck would receive a CVOR if Ontario trucks hauling the same commodities would require the equivalent of our PSV or CT plates.

The Task Force is intrigued and impressed by the proposed CVOR; however, the complexity of the task of making the system operational must not be underestimated. It is advisable to study closely the progress being made in Ontario and to adapt the system in Manitoba if it proves to be feasible.

The Task Force recommendations are also consistent with the decisions made by the federal and provincial ministers responsible for transportation at their meeting in Ottawa on May 31, 1984. At that meeting the CCMTA committee on motor carriers was given the following terms of reference:

Terms of Reference on Trucking for the Canadian Council of
Motor Transport Administrators Standing Committee on Motor
Carriers

The Council of Ministers of Transportation and Highways Safety agreed:

- 1) to immediately take action on the implementation of the following reforms to the regulation of extra-provincial trucking in Canada:
 - a) shifting the burden of proof on entry from the applicant to the respondent;
 - b) eliminating rate approval for all extra-provincial rates;
 - c) implementing an expanded common list of specified commodities (e.g. primary agricultural and resource products) which would be exempt from entry control (except fitness) and rate filing;

- d) streamlining and reducing existing licence categories on a basis which will be compatible among jurisdictions including:
 - common commodity definitions;
 - common geography and routing language;
 - elimination of certain special restrictions (e.g. vehicle category);
 - etc.
 - e) streamlining the processing of transport board licence applications.
- 2) to seek from the summer meeting of the Premiers' Conference, authority to develop an integrated approach to the collection of all truck related taxes and insurance; the identification of commercial vehicles; and related reporting and enforcement regulatory provisions under transport ministry direction in each jurisdiction.
- 3) to give further study to:
- a) eliminating the "Public Convenience and Necessity" test entirely in favour of a fitness test;
 - b) eliminating or further reducing rate filing requirements;
 - c) taking action at a regional level on appropriate further regulatory reforms;
- 4) to direct the COMTA through its Standing Committee on Motor Carriers to develop, in consultation with appropriate industry groups, an implementation plan for the Fall 1984 meeting of the Council. This plan will include:
- a) specific implementation steps including a timetable for the actions agreed to under item 1 above;
 - b) preliminary implementation steps for the integrated administrative approach (single window system) outlined under item 2 above;
 - c) a workplan including timetable to complete the areas of study listed under item 3 above;
 - d) proposals for the organization and direction of these implementation activities including resource implications;

- e) a draft "Memorandum of Agreement" for signature by each jurisdiction in support of these reforms.

In the opinion of the Task Force the recommendations which follow are consistent with the objectives of a simplified and effective regulatory system.

The first recommendation is that a distinction must be made between passenger services and freight services. The regulations seem to be working well in providing regular bus services throughout Manitoba. The Task Force has received no complaints over the passenger and express services supplied by the bus companies, and the Task Force has no intention to recommend changes to a system which appears to be working well.

With respect to the regulations governing the trucking industry the thrust of the recommendations is in the direction of less rather than more regulation, of enhancing the opportunities of rural based carriers and of owner-operators and of simplifying the regulations and streamlining the operating procedures of the MTB. The Task Force is in favour of the principle that the opponent(s) of an application would have to prove that the granting of an additional authority would be against the public interest.

B. Summary of Recommendations

The following is a summary of the recommendations:

1. that a separate vehicle class be created for public service passenger vehicles;
2. that no further increases in weights and dimensions be made pending national study results, and overweight regulations be uniformly enforced;
3. that a study of the existing registration fee structures be undertaken;
4. that the Manitoba Government urge the federal minister to amend maximum hours of work legislation;

5. that all tariffs of rates be maximum rates only;
6. that no tacking or self-interlining of authorities be permitted without Motor Transport Board approval; no automatic 'grandfathering' of previous tacking or self-interlining;
7. that all trucks used in extra urban for-hire transport have a PSV plate;
8. that the Motor Transport Board be directed to extend the current list of "exempt" commodities;
9. that operating authorities be expanded so that all rural points can be served to and from all other points including intra and extra provincial points.
10. that more effective enforcement be sought through: increased weigh-scale activity, consolidation of enforcement and inspection functions into one unit, increased penalties, and clarification of operating authorities;
11. that more resources be made available to the Motor Transport Board and a permanent review mechanism be established;
12. that a more precise definition of commercial truck and local truck be adopted;
13. that owner-operators be given legal status;
14. that the Highway Traffic Act definition of 'farm truck' be better defined and that the use of farm trucks in for-hire transportation be disallowed;
15. that "inter-corporate hauling" on CT plated trucks be permitted upon application to the MTB in cases where intercorporate ownership is 51% or more.
16. The Government should consider a policy of shifting the burden of proof from the applicant to the respondent.

The specific measures required to reform the regulated system are contained in the detailed recommendations below.

C. Recommendation Details

1. Subject: Inter-City Buses and Livery Vehicles

Issue: Ease of delivering regulatory program

Present Situation:

Intercity buses and livery vehicles are included in the same category in the Highway Traffic Act as for-hire trucks. As such, the Act limits the regulatory authorities in tailoring the regulatory program to meet the specific needs of the passenger transport industry.

Proposed Change:

Create a separate vehicle class for public service passenger vehicle with a new definition.

"Public service passenger vehicle" means a motor bus or passenger vehicle owned by or operated on behalf of a motor carrier for the transportation of persons or property upon the highway, but does not include the passenger carrying motor vehicles or a motor bus company operating within a city, or school buses, ambulances, hearses, or passenger motor vehicles regulated under the Taxicab Act or a municipal by-law in cities, towns or villages.

Means of Implementation:

Statutory

Probable Impact:

The operation of the industry will not change. The Motor Transport Board will be able to deal with passenger transport separately from goods transport and better meet the needs of industry and the travelling public.

Administrative Impact:

Little impact

2. Subject: Weights and Dimensions

Issue: Impact of increases in limits on highways and budget
Uniformity with other jurisdictions
Uniformity of enforcement

Present Situation:

The motor carrier industry in the past has lobbied the Province to increase weight and dimension limits on the highways in order to reduce its operating costs. The Province has usually consented without adequate consideration of its own costs due to increased deterioration of the existing roads and bridges and the added expenses of re-building existing roads and bridges to higher standards. The benefits and costs of increasing weight and dimension limits and their incidence upon the affected parties have not been adequately assessed. The increased expenses of the higher standards are not reflected in current budgets.

While no province does an adequate analysis, each has tended to follow its neighbours in increasing limits under the logic of maintaining uniformity.

With the motor carrier industry interested in capturing heavy and bulk traffic from the railroads, the danger of drifting into unnecessary duplication of surface facilities exists.

It is alleged that farmers are frequently not prosecuted for overload infractions and receive only a warning.

Proposed Change:

No further increases in weight limits pending the release of COMTA- RTAC study on the impact of truck weights upon the highway network. Enforce overweight regulations uniformly.

Means of Implementation:

Policy decision

Probable Impact:

Reduced damage to road network.

Administrative Impact:

Additional cost of prosecutions.

3. Subject: Registration Fees

Issue: Equity of Taxation

Present Situation:

Four separate registration fee schedules exist:

1. one for public service vehicles and commercial trucks
2. one for milk and cream trucks (PSV or CT)
3. one for farm trucks
4. one for 'other' trucks

The existing schedules have fees varying with the registered maximum weight of the vehicle. The schedule was established in 1954 and fees increased periodically by a common factor.

The equity problem is created because trucks that impose the same costs upon the Province are paying different registration fees. The rationale for separate fee schedules is undefined. The relationship between the weight and fees no longer reflects the design of trucks today nor additional knowledge about the impact of truck weights on roads. Preliminary research indicates that vehicles with light axle loads are overpaying while vehicles with heavy axle loads are underpaying.

Proposed Change:

A study of the existing fee structures be undertaken to investigate:

1. the rationale for continuing separate fee schedules
2. alternate forms of vehicle registration and user-taxes
- e.g. a weight-distance tax
3. a fee schedule reflecting the varying impact on the provincial road system of different vehicle weights.

The study will recommend a new fee structure for implementation by the Province.

Means of Implementation:

A new fee structure can be implemented by regulation.

Probable Impact:

A more equitable fee structure will be instituted which will better reflect the incidence of cost imposed upon the Province by users of its road system. The objectives of separate schedules for different classes of vehicles will be defined and the cost effectiveness of achieving these objectives through fee differentials or alternative methods can be identified. A fee structure that reflects the incidence of cost imposed by different types of vehicles may influence the choice of vehicle type. The composition of the vehicle fleet may shift towards vehicles imposing relatively lower costs on the road system.

Administrative Impact:

Little impact

4. Subject: Working Conditions

Issue: Federal "hours of work" limits are too long and inadequately enforced.

Present Situation:

Provincial regulations: none

Federal regulations:

Normal Maximum

- a) 10 hours per day driving
- b) 15 hours per day on duty
- c) 60 hours on duty per 7 day period

Maximum Allowed Upon Request for Exemption

- a) 15 hours per day driving
- b) 18 hours per day on duty
- c) 70 hours on duty per 7 day period

The requirement to keep logbooks has been dropped. There is no on-the-road enforcement of regulations.

Where method of payment is on a per-mile basis drivers have inducement to drive many hours. This raises concerns for the health and safety of themselves and of other road users.

Proposed change:

The Manitoba government should ask the federal government to pass more stringent hours of service regulations for motor vehicle operators.

The Manitoba Government should ask the federal government to either make daily logs mandatory again, or to require that all trucks in extra-provincial transportation be equipped with tachometers.

The Manitoba Government should propose to federal government and to the governments of other provinces that RCMP, Quebec and Ontario Provincial Police and provincial highway inspection staff be named "motor transport inspectors" under the Canada Motor Vehicle Operators Hours of Service Regulations.

Means of Implementation:

Policy

Probable Impact:

Reduced maximum hours of work will improve the safe operation of trucks as the chance of driving when tired will be lessened.

More employment opportunities may be created.

5. Subject: Intraprovincial Rates

- Issue: Current system tends to be:
1. inflexible
 2. arbitrary
 3. poorly understood
 4. biased towards carriers
 5. frequently violated

Present Situation:

Under the Highway Traffic Act, intraprovincial rates are prescribed by the Motor Transport Board. Freight rate schedules are prepared with rates varying by distance and by size of shipment. Auxiliary charges are set. Variations from the prescribed schedule negotiated between carriers and shippers may be filed for approval by the MTB. The MTB through waybill audits has found that carriers establish separate rates without filing for approval.

The new rate schedules are set by a rather obscure process. The Manitoba Trucking Association on behalf of all carriers, submits estimates of the percentage increase in various expense categories. After verification of these increases and adjustments where warranted, a new schedule is calculated using a computer program. The rate formulae contain constants which are manipulated to produce a schedule satisfactory to the Board and to the MTA. The manipulation of the rate formulae is justified as a means of introducing flexibility, but it would seem to be somewhat arbitrary.

The inflexibility in rates arises from the schedule varying only according to distance and size of shipment.

The consultation process does not involve representatives of shippers and may thus be imbalanced.

Proposed Change

1. All tariffs of rates will be maximums only with actual rates subject to negotiation by shippers and carriers.
2. The basis of the MTB's determination of maximum rates will be made public.
3. A program should be instituted to monitor, analyze and publicize periodically the actual rates charged.

Means of Implementation:

1. A statutory change to Section 264, Subsection (3) would be required to establish that the standard tariff is a maximum only.

2. The decision to make the basis of rate determination public and understandable is a policy decision.
3. The establishment of a rate monitoring and analysis program is a policy decision.

Probable Impact:

1. If the maximum rates published are regarded as too high, shippers and carriers can negotiate lower rates based on their own needs. This flexibility will permit the two parties to tailor rates to meet special conditions relating to origin/destination of shipments, seasonal movements, the ability to pay, etc. Common carriers might be able to use lower rates to capture traffic now carried by private carriage thus improving their financial viability.

The schedule of maximum rates will provide protection to small shippers and rural communities on sparse traffic lanes.

2. Public knowledge of the accepted rate-making mechanism will provide a guide to shippers and carriers in calculating rates for the basis of negotiation. This is especially important for small carriers or new entrants into the industry who might lack experience, sophistication or staff to estimate appropriate rates.

Public knowledge will enhance shipper and carrier confidence in the maximum rate schedule and its use.

3. The institution by the MTB of a rate monitoring and analysis program will provide:
 - a) a means to detect rates in excess of the maximum rates set;
 - b) a means to detect unacceptable discrimination in rates charged shippers, and;
 - c) provide the Board with a better understanding of actual rate-making practices so that maximum rate determination reflects the needs of carriers and shippers.

Administrative Impact

1. No change.
2. Increased resources will be required to modify the existing method so that it is publicly presentable, e.g., appears less arbitrary. The work could be done by hiring additional staff or retaining a consultant.
3. Additional staff and funds will be required to undertake program of monitoring and analysis.

6. Subject: Tacking and Self-Interlining

Issue:

When two common carriers merge or a carrier consolidates two separate divisions, are the operating rights of the two automatically merged? Are new operating rights created by the action, i.e. does the right to serve A and B, and the right to serve B and C become the right to serve A and C also, either directly or indirectly?

When a carrier purchases a second carrier, or the majority of shares of the second carrier, are the operating rights of the two automatically merged?

Present Situation:

The current situation is confused. Not all the purchasing carriers appear before the MTB to have the two operating authorities reviewed and merged. For those that do, the separate authorities may contain sections which the Board will not combine or cannot combine due to unclear wording of the original authorities. Sometimes, one may be expanded to include sections from the other, but the rights emanating from the added sections are unclear.

Those who do not appear before the Board, but make their own decisions on what is permitted may be charged with violating their authorities. Carriers have contested the issue in court only to obtain a legal ruling which neither they nor the Board can understand.

Proposed Changes:

1. Manitoba Transport Board should adopt a clear and consistent policy: no tacking and self-interlining allowed unless MTB approves.
2. 'Grandfathering' of past purchases should not be permitted. All carriers that have acquired an authority through the purchase of another carrier should re-apply to the MTB for a new authority describing precisely what they want to do.

Means of Implementation:

1. Policy direction to MTB.
2. Regulation by MTB.

Probable Impact:

1. The impact is likely to be small as purchases will be made to rationalize or improve transport operations. Carriers will be able to make a strong case for MTB approval. The MTB will be kept informed about tacking and self-interlining and any doubts about the intent of the combined authorities can be clarified beforehand.
2. No change will occur unless the MTB finds cause to disallow some portion of the combined authorities.

Administrative Impact:

Initially considerable increase in staff work.

7. Subject: Use of PSV Plates

Issue: Type of Licence plates required for hauling "exempt" commodities.

Present Situation:

The wording of the regulations dealing with exempt commodities has been interpreted to mean that trucks with T-plates, CT plates, or PSV plates can be used to haul exempt commodities for-hire in interurban transport on the highways. This confuses the distinction between the three types of plates. Enforcement has been complicated and taxation inequities created.

The main purpose of issuing a separate T-plate is to distinguish between trucks used primarily within urban areas and those used in interurban transport on the highways. Since trucks with T-plates carrying exempt commodities in interurban transport are allowed, enforcement officers cannot identify an urban transport vehicle making an unauthorized trip by observing its licence plate. Since registration fees for T-plates are lower than those for PSV and CT plates, an inequity in taxation exists between a truck with a T-plate hauling exempt commodities for-hire and a truck with a PSV or CT plate hauling the same commodity for-hire.

The CT plate is supposed to be issued to trucks not used in for-hire transport. Yet, these trucks can now carry exempt commodities for-hire. Motor carriers using these trucks to carry exempt commodities may be encouraged to take the risk of carrying non-exempt commodities for-hire in the same vehicle because the possibility of an enforcement officer stopping the vehicle and finding a non-exempt commodity is a matter of chance.

Trucks carrying material used in highway construction are permitted to use T-plates. Sand and gravel are exempt commodities, and are used in highway construction. Since dump trucks have been used to carry sand and gravel, the custom of issuing T-plates to all dump truck operators, regardless for what or where the truck is used, has developed.

Proposed Change:

Require all trucks used in extraurban for-hire transport to have a PSV plate.
Eliminate separate classification of milk and cream trucks.

Means of Implementation:

Repeal regulation 231/73 and replace with new regulation.

Probable Impact:

1. Equal taxation of all trucks used in for-hire transport.
2. Better enforcement of the separate uses of urban and interurban transport vehicles, and that of private and common carriage.
3. Additional registration fee revenue will be collected.
4. If dump trucks carrying highway construction material are required to pay the higher PSV fees, their operators will want to include the increase in their contract fees with the construction contractors who will in turn, want to include the increase in their contracts with the Department of Highways and Transportation. The increase in highway expenditures will be balanced by the increase in revenues so the Government's net financial position will not change.

The Department of Highways and Transportation may have to monitor the contract arrangements between the construction contractors and dump truck operators to prevent the contractors from using their bargaining power to retain part of the increase for themselves.

5. A separate list of 'designated' commodities exists for international movements where no proof of public need or convenience is required to obtain a PSV licence plate. The distinction should be maintained.

Administrative Impact:

Little impact

8. Subject: Exempt Commodities

Issue: Extending the list of exempt commodities.

Present Situation:

Exempt commodities are those which can be transported for-hire by a motor carrier without a certificate from the MTB and without being licensed as a commercial truck hence exempt from Sections 258 and 291 of the Highway Traffic Act. The commodities and situations under which they are exempt are described in the present regulation 231/73. These include:

Agriculture-Related Products

1. Articles used in weed or grasshopper control programs
2. Grain cleaners
3. Dead animals to rendering stations
4. Eggs and dressed poultry from farm to market (milk and cream trucks only)
5. Livestock to/from agricultural fairs
6. Grain to market or mill; return of feed, etc. from mill
7. Sugar beets
8. Seed grain, grass, sunflower or vegetable seed to farmers
9. Straw
10. Fruits and vegetables, from farm to market
11. Livestock from farm to market (farm and market must be within 15 miles of place of registration of truck)
12. Pregnant mares' urine

Other Products and Services

1. Towing of disabled vehicles
2. Tools and equipment owned and used by repairman for variety of machinery and grain elevators
3. Well drilling machinery and equipment owned by owner of vehicle
4. Petroleum products (within 15 miles of place of business of registered owner)
5. Demonstration of trucks by dealers or manufacturers
6. Permanently mounted feed mills
7. Delivery of their own fish by fishermen in truck with less than one-half ton capacity
8. Drayman operation within 15 mile radius of urban centre where drayman has place of business - (single, isolated trip and not used on regular route)
9. Intraprovincial transportation of primary forest products
10. Sand or gravel

11. Property on single or isolated trip with letter of permission from Secretary of Motor Transport Board
12. Sewage, sludge, waste oil, liquid waste of all kinds
13. Materials used for cleaning, chlorinating, etc. wells, and septic tanks.

Passing the test for public need and convenience is the major regulatory barrier to an individual starting a trucking firm or an existing small firm diversifying the type of commodities it transports. The existing list provides a somewhat limited range of opportunities. Exempt commodities are generally free of route restrictions and limitations on the area to be served.

Expanding the list of exempt commodities is a means of gradual relaxation of regulatory control over the motor carrier industry.

Proposed Change:

The MTB would be directed to examine a list of commodities which could be added to the current exempt list. The MTB could hold public hearings inviting representation from all carriers and shippers. The suggested policy for the MTB to follow might be adding a commodity to the list unless a strong case against that action is made.

It may further be noted that, as directed by the Council of Ministers, a subcommittee of CCMTA will draft a proposal for a common list of exempt commodities in the western provinces and the Yukon and North West Territories.

Means of Implementation:

Regulation

Probable Impact:

This change would widen the market opportunities for all carriers, except where the newly exempted commodity has been specified in some existing carriers' authorities, but excluded from the rest. Those carriers affected may lose some traffic.

The transportation system would become more flexible because carriers would be freed from route and geographic market restrictions, and shippers would have access to a wider range of common carriers. Shippers would be in a position to demand better service and rates and carriers

would be in a position to meet those demands. With more flexibility and more common carriers, shippers may opt for less private carriage and provide additional traffic to common carriers.

Finally, exempt and designated commodity haulers are involved now in the 'piracy' of traffic about which the authorized carriers complain. Their involvement may be partially explained by insufficient traffic being available to them. Expanding the range of legitimate traffic available to them might reduce the need for them to pursue unauthorized traffic at the expense of authorized carriers. Concern has been expressed that 'piracy' of traffic might not decline because new carriers will enter the industry as the exempt list grows.

The adjustment can be gradual because it is under the control of the Motor Transport Board.

Administrative Impacts

Work load will increase initially while suggested list of commodities to be added to exempt list are examined and hearings held. However, this would lead to a simplification of the process as the exempt commodity list is expanded.

9. Subject: Rural General Freight Carriers

Issue: To ensure their continued viability.
To ensure good service to rural Manitoba.

Present Situation:

Many intraprovincial rural general freight carriers face economic difficulties with little growth in rural population and economic activity.

Existing operating authorities have designated rural carrier activities as primarily 'hub and spoke' operations. Rural carriers transport traffic to and from Winnipeg or Brandon. Traffic to and from other Manitoba centres is permitted under a single trip authority which restricts shipments to a complete truckload being shipped from a single consignor to a single consignee. Less than truckload traffic must be interlined - taken to Winnipeg and transferred to another carrier. Interlining means higher costs, time delays and greater likelihood of damage to cargoes. Shippers are increasingly choosing to do their own trucking to avoid interlining.

Rural carriers with intraprovincial authorities must interline with interprovincial carriers to handle extraprovincial traffic. It is probably easier for an interprovincial carrier, particularly the large Winnipeg-based ones, to extend their authorities to include a rural community than for a rural, intraprovincial carrier to extend its authority to become an interprovincial carrier. The interprovincial carriers capture the bulk of extraprovincial traffic.

Proposed Change:

Expand rural general freight carriers' authorities to/from points named in existing authorities (other than Winnipeg and Brandon) to allow movements to/from all other intra and extraprovincial points.

Means of Implementation:

Regulation - Motor Transport Board modifies all rural carrier authorities.

Probable Impact:

Economic opportunities for rural common carriers increased because:

1. the elimination of the need to interline intra and interprovincial traffic may make common carriage more attractive to shippers now using private carriage, and;
2. it will be easier for rural based carriers to obtain interprovincial operating authority from the Motor Transport Board. A major increase in applications for routes from Western Manitoba into Saskatchewan may be expected.

Transportation service to shippers improved due to:

1. reduced cost, delivery time, breakage and pilferage, and;
2. more choice of carriers to provide service.

Administrative Impact:

An initial increase in the work load at the Manitoba Transport Board as rural common carrier authorities are re-written, but applications for extended authorities will decrease.

10. Subject: Enforcement

Issue: Effective enforcement of the Highway Traffic Act

Present Situation:

Three units are responsible for enforcement of the Highways Traffic Act - the Traffic Inspection staff in Highways Maintenance, the Motor Transport Board investigators and Motor Vehicle Inspection Section in the Motor Vehicle Branch.

The Traffic Inspection staff are the primary agents in detecting violations of motor carrier regulations. Nine permanent stations are staffed, but only two are staffed for 24 hours. The remaining seven are staffed intermittently for 24 hours, but violators can normally plan to pass the stations in the off-hours. Mobile crews intermittently operate scales on specially placed shoulder extensions during daylight hours. The Headingly scale is the furthest west on Highway No. 1 and Southwestern Manitoba lacks permanent scales.

The poor wording of operating authorities and regulations makes interpretation by inspection officers and courts difficult. Additionally, a deliberate violator may carry papers purporting to show the haul is legitimate. A complete updated set of operating authorities for all carriers does not exist. Inspectors use an unofficial listing found in the Manitoba Trucking Association's annual publication. The listing is not necessarily accurate in its detail. If inspectors suspect a violation, they will file a report. Investigators from the Traffic Inspection unit or the MTB will investigate the report by visiting shippers, receivers, and carriers in search of evidence.

If evidence is adequate, the violators will be prosecuted, but the penalties upon conviction are insignificant.

People appearing before Task Force expressed concerns about unsafe vehicles on the road.

Proposed Changes:

1. Increased weigh-scale activity - including 24 hour operations at existing stations and additional permanent or mobile inspection stations.
2. Consolidation of enforcement and inspection functions.
3. Increased monetary fines for initial offences against the HTA; repeat offender has authority cancelled and licence plates confiscated.

4. More vehicle safety inspections and enforcement.
5. In conjunction with other recommendations, Motor Transport Board review operating authorities, purge vague terminology, and compile an official listing which is kept current with Board rulings.

Means of Implementation:

Increased weigh-scale activity and vehicle safety inspections are policy decisions. The consolidation of the enforcement and inspection activity is a policy decision.

Increased penalties for infractions of the HTA would require statutory changes.

Probable Impact:

Enforcement of existing rules becomes more effective. Violations of operating authorities will be detected more frequently. Penalties will become financial deterrents. Attempts to violate authorities will decline.

Overweight trucks will be detected more often. Overloading of trucks will become more risky and more operators will stay within the prescribed limits. With fewer overweight vehicles on the road, the highway and road network will be better protected from excessive deterioration.

As more unsafe vehicles are detected and removed from the highways until repaired, the number of accidents will decline.

Administrative Impact:

Additional inspection stations and extended hours will require capital expenditures and additional operating expenses. Higher penalties may mean more contested cases so there may be some increase in legal enforcement costs and staff involvement. Joint weigh scale and vehicle safety inspection could occur at the permanent stations and some increase in funding for facilities will be required. Clarifying operating authorities will require additional workload for Motor Transport Board.

11. Subject: Motor Transport Board

Issue: Board's ability to carry out responsibilities.

Present Situation:

The Motor Transport Board is empowered to administer Part VIII of the Highway Traffic Act and its accompanying regulations. For a long time, the work load of the MTB has been greater than its allocated staff and financial resources can handle. The MTB has been unable to effectively monitor or administer the regulatory environment established for the motor carrier industry. A gap exists between the actual environment in which the industry operates and that which is created within the legislative framework. While this is partly due to changes in the industry not being met with changes in the legislative framework, the inability of the MTB to function effectively has allowed the industry to act independently in matters where the Board was to have a role.

Proposed Change:

1. Provide additional resources to meet the current and future workload required to meet the Board's responsibilities.
2. Establish a mechanism whereby Part VIII and its associated regulations can be objectively reviewed, evaluated, and amended as necessary every four or five years.

Means of Implementation:

1. Policy
2. Statutory

Probable Impact:

The Motor Transport Board would be able to effectively fulfill its responsibilities. The laws and regulations established will be enforced.

Administrative Impact:

The Motor Transport Board will have to be provided with more resources.

12. Subject: Nature of Private Trucking; Use of CT and T Plates

Issue: Lack of clarity in definition of private (CT) trucks

Present Situation:

The traditional concept of a private truck is one where the owner of the truck owns or has owned the cargo of the vehicle. A private carrier is a non-transportation firm having its own trucking fleet.

The Highway Traffic Act labels the interurban private truck as a commercial truck and defines it to be a truck that:

1. is not a public service vehicle as defined in the Act;
2. is not a farm truck as defined in the Act, and;
3. is not one of several excluded categories of trucks.

This definition by exception excludes any reference to ownership of the cargo, leaving the notion that no compensation nor reward is received for its use, as the only criterion for a private truck. Since private carriage of any commodity still incurs a cost, sound economics and good business practice require that the cost be covered in some way. The definition has these problems:

1. no person operating a business in a sensible manner could adhere to it, nor avoid violating it;
2. it cannot be enforced without finding evidence that money has been paid through an audit of waybills at the place of business, and;
3. it is also inconsistent with definitions in other jurisdictions where ownership is included.

Proposed Changes:

Redefine commercial truck as follows:

"Commercial truck" means a truck owned by or operated in the service of a person or company engaged in logging, mining, manufacturing, merchandising and/or other business enterprises other than for-hire transportation, but does not include:

- a) a farm truck;
- b) a truck operated solely within the boundaries of the city, town, village or rural municipality, where the business is located.

Means of Implementation:

Statutory changes are required.

Probably Impact:

The new definition brings the legislation into conformity with reality since it does not exclude compensation for private carriage. Private carriers will be able to evaluate the alternative of using common carriers more accurately and select the more economically efficient and cost effective means of carriage.

The new definition sharpens the distinction between urban private transport and interurban private transport. Urban private carriers whose traffic took them beyond the municipal boundaries will be obligated to obtain CT plates for part of their fleet or relinquish the traffic to for-hire carriers.

Trucks belonging to governments, municipality, schools, or other public bodies that are operated outside urban boundaries would require CT plates at higher registration fees.

The federal government and its institutions will pay higher fees, increasing provincial revenues. For the provincial government, the higher fees on its trucks will be offset by the increased revenues. Provincial institutions, such as the Manitoba Telephone System, may pass the higher fees for their trucks onto the public through rate increases, but this represents a minor change in the manner in which the funds are collected. To the extent municipal governments and their public bodies have the increased fees offset by higher grants from the provincial government, no change in provincial revenues will occur. However, the cost of using trucks owned by public bodies on the highways will be more accurately reflected in their registration fees.

The Manitoba Public Insurance Corporation may have to re-assess the insurance premiums charged on T plated trucks.

Administrative Impact

Insignificant

13. Subject: Owner-Operators

- Issue:
1. Concern with financial viability legal status and working conditions.
 2. Abuse of authority by authorized carriers.

Present Situation:

Although the Highway Traffic Act requires any individual or corporation operating a truck on the highway to hold an operating authority, a category of for-hire trucking firms (owner-operators) which do not have operating authorities, exists. These firms operate under leasing contracts with the authorized motor carriers. The current law does not sanction this. The authorized motor carriers register the owner-operator's truck(s) to obtain the licence plate(s) and certificate(s) for them. Originally, the motor carriers registered these trucks as their own until the Motor Vehicle Branch insisted that the real owners be identified for liability purposes. The method of registration is still legally questionable, but since over one third of the for-hire trucks registered in the Province fall into this category enforcing the letter of the law would throw the industry into chaos.

Since the owner-operators cannot obtain the licence plates or papers necessary to work without signing contracts with the authorized carriers, the authorized carriers have considerable bargaining power in defining the terms of work in the contract. Although some authorized carriers may dispute the extent of the problem, many owner-operators may be required to accept terms that involve unreasonable hours and unsatisfactory remuneration.

While owner-operators can apply for operating authorities, the requirement to prove public necessity and convenience through the hearing process has been an effective barrier to legal entry into the industry.

Authorized carriers are likely contracting portions of their operating authorities to owner-operators and opposing applications from others to undertake that work under an independent authority. For the owner-operator, signing a contract with an authorized carrier is the easier way to enter the industry. This practice may have eased pressure to deregulate the industry in the past.

Private carriers also contract work to owner-operators who have their vehicles painted with the private carrier's logos and the private carriers obtain CT plates for the trucks.

Proposed Changes

1. Re-define the public service vehicle as follows:

"Public service truck" means a truck owned by or operated in the service of a motor carrier for the transportation of property upon the highway.

2. Define a motor carrier as follows:

"Motor carrier" means a person or company to whom the Motor Transport Board has issued an operating authority to provide for-hire transportation services along the routes, serving the districts or carrying the commodities specified by the Board.

3. Define an owner-operator as follows:

"Owner-operator" means a person or company to whom the Motor Transport Board has issued an operating authority to contract for-hire transportation services with a motor-carrier or other business enterprise.

4. Owner-operators will be able to go to the Motor Transport Board and, after satisfying the Board that they have the appropriate insurance, bonding, etc. for their vehicles, obtain authorities permitting them to contract their services to an authorized motor carrier, a private shipper, or haul exempt commodities. Only exclusive contracts (minimum 30 days) would be permitted. Such authorities will be available upon application without the requirement to demonstrate public need or convenience.

5. Provision that owners of trucks register their vehicles strictly enforced.

Means of Implementation:

Statutory and policy

Probable Impact:

Owner-operators will be provided legal status under the Highway Traffic Act. The Act will reflect motor

carriers' practice of contracting work to owner-operators. Laws currently flouted will be obeyed.

The bargaining power between owner-operators and motor carriers will become more balanced. Owner-operators will have the right to work as a designated commodity carrier without signing a contract with a motor carrier. They will be free to sign with any motor carrier. The motor carriers will be more inclined to provide acceptable terms in the contract. Many owner-operators prefer to be 'contractors' of trucking services rather than a motor carrier firm.

Private carriers may increase the amount of trucking contracted to owner-operators and reduce the number of trucks in their own fleet.

Providing owner-operators with authorities that include hauling exempt commodities will be consistent with the expansion of that list of commodities. Shippers of these goods would have a larger group of authorized carriers to serve them.

Some holders of exempt commodity authorities are tempted to haul other commodities in violation of their authorities. Increasing their numbers could increase this enforcement problem so that the recommendations to improve enforcement must be part of the reform package.

Administrative Impact:

Issuing authorities to owner-operators will increase the workload of the Motor Transport Board and it will require additional staff to handle the paperwork.

14. Subject: Farm Trucks

Issue: Equity of taxation and fair competition.

Large farm trucks are being used in for-hire transport in competition with trucking industry, but pay lower registration fees, insurance premiums and use untaxed fuel.

Present Situation:

Current legislation defines a farm truck as a vehicle owned by a farmer. The definition of who is a farmer is very general, and does not provide a good guideline to the Motor Vehicle Branch when a truck is registered.

The concerns heard by the Task Force were not related to farmers hauling their own products to market, nor to their hauling supplies back to the farm.

Under current legislation, farm trucks can be used to carry for-hire cereal grain, sugar beets, fruit and vegetables from farm to market. This use is not permitted in other provinces which issue a special farm licence plate. Farmers can register large trucks such as semi-trailers, and use them for long-distance hauling for-hire. Some farmers have diversified into trucking as an off-farm business. A large trucking firm has bought farm land and registered itself as a farming corporation. It has a fleet of trucks which are registered as farm trucks to haul sugar beets. Farmers should be able to diversify into a trucking business as an off-farm activity if they want, but they should compete with truckers on an equal taxation basis when they do. The inequity in taxation makes hauling of agricultural products less economic for rural for-hire carriers and deprives them of potential traffic.

Proposed Changes:

1. Disallow use of F plates in for-hire transportation;
2. Redefine 'farm truck' in the Highway Traffic Act as a truck exclusively used in the owner's farm operations and to assist another farmer in his farming operations.
3. Place a restriction on the size of trucks allowed to be registered as a farm truck without reference to the Motor Transport Board. Give MTB authority to exempt large trucks, e.g. semi-trailers, owned by a bona fide farmer from requiring a PSV plate upon the farmer's signing a declaration that truck will not be used for-hire.
4. Repeal Subsections 6(26) to 6(29) of Highway Traffic Act which permit the registration of leased vehicles as farm trucks.

Means of Implementation:

All changes must be legislated.

Probable Impact:

The opportunity for motor carriers to haul agricultural products on F plated trucks by buying land will be eliminated.

Farmers who wish to diversify into the trucking business as off-farm work will still be able to do so. They will require PSV plates and have to pay the same fees, insurance and fuel taxes as any other for-hire carrier. Since quarterly registrations are possible, a farmer could change the registration of his vehicle on a seasonal basis. Farmers who do use large trucks as part of their farm operation could still obtain F-plates and the associated benefits.

Rural for-hire carriers will be in a better position to compete for agricultural traffic. Since farmers can haul their own produce or start their own trucking operations, rates will be competitive.

Registration fee and fuel tax revenues to the Province will increase.

Administrative Impact:

Issuing of licence plates made easier. Handling applications for exemption of large farm trucks from PSV plates involves a small increase in workload for MTB.

15. Subject: Inter-Corporate Hauling

Issue: Allowing private carriers with common ownership to carry each other's goods in their separate truck fleets or in a consolidated trucking division.

Present Situation:

1. Inter-corporate hauling is not explicitly permitted in Manitoba;
2. Ontario has permitted inter-corporate hauling where one private carrier owns at least 90% of second private carrier;
3. United States has 80% ownership rule, but firms in same industry with inter-corporate ownership of 51% or more are obtaining authorities from IOC upon application;
4. Private Truckers Council, Canadian Industrial Traffic League, Canadian Manufacturers Association are lobbying for inter-corporate hauling at 51% ownership rule.

Proposed Change:

1. Inter-corporate hauling allowed with a 51% ownership rule;
2. No authority required but inter-corporate grouping must provide list of related firms and evidence of ownership link to MTB for enforcement purposes.

Means of Implementation:

Policy

Probable Impact:

1. Private carriers could make better utilization of their truck fleets.
2. Public carriers would have to be more responsive to shippers' service and rate requirements.

Administrative Impact:

Insignificant

16. Subject: Burden of Proof at MTS Hearings

Issue: Should the objector to an application for an operating authority be required to demonstrate that granting the application would be contrary to the public interest as opposed to the current situation in which the objector attempts to demonstrate that the applicant may not have provided convincing evidence to support his case?

Present Situation:

1. Section 263(2) of the HTA appears to place the burden of proof upon the applicant, as follows:

"Where the transport board finds...that the existing facilities for transportation are insufficient, or that public convenience will be promoted by the establishment...of the proposed transportation service...the board may grant a certificate to the applicant..."

2. Applicants must persuade supporters to testify on their behalf and to subject themselves to cross-examination; applicants find it very difficult to persuade witnesses to testify because of the nature of the cross-examination to which they are subjected;
3. Objectors need not provide MTS with any grounds for demanding a hearing after application is gazetted.

Proposed Change:

The Government should consider a policy of shifting the burden of proof from the applicant to the respondent. The federal and provincial ministers responsible for transportation agreed in principle to this approach to dealing with applications for extra-provincial operating authorities.

Comment:

The matter is under active study by a committee established at the direction of the Council of Ministers Responsible for Transportation. It seems

prudent to await the outcome of these discussions before making a final decision.

Further complicating the issue is the requirement under the delegation of authority from the federal government, that extra-provincial and intra-provincial motor transport must be regulated "in like manner".

Means of Implementation:

Amend Section 263(2) of The Highway Traffic Act.

Probable Impact:

It may be easier for new firms to enter the industry.

Increased competition in the industry may lead to better service and prices.

Administrative Impact:

Possibly fewer hearings.